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Guide to Federal tax elections; Studies in Federal taxation 3

Irvin F. Diamond

Roger L. Miller

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GUIDE TO FEDERAL TAX ELECTIONS

Third Edition, Revised

AICPA

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STUDIES IN FEDERAL TAXATION

GUIDE TO FEDERAL TAX ELECTIONS

Third Edition, Revised

EDITED BY IRVIN F. DIAMOND and ROGER L. MILLER

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American Institute of Certified Public Accountants

Guide to Federal Tax Elections

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TAX STUDY
NO. 3

Guide to Federal Tax Elections

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Edited by
Irvin F. Diamond, CPA
Rogoff & Youngberg
and
Roger L. Miller, CPA
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Foreword

The *Guide to Federal Tax Elections* was originally published in 1971 and revised in 1973 and is the third of six books in the Institute's tax studies program. The objective of this series is to help CPAs meet their responsibilities to provide high quality service in the area of federal taxation.

The release of this edition has been delayed several times. Each time the manuscript was ready for publication, Congress passed a new law requiring further changes. The book is current through the elections contained in the Revenue Act of 1978, the Energy Tax Act, and the Foreign Earned Income Act. We believe the study is unique, and it should provide the reader with a quick and handy reference to the various tax elections.

A word of appreciation goes to Joel M. Forster, CPA, who edited the first edition of this study, for the work he did in that edition and for his helpfulness in this revision.

In addition, the following members of the publications subcommittee of the AICPA Federal Taxation Division assisted in reviewing code and regulation sections for elections: Eli Gerver, CPA, Chairman; Stanley H. Beckerman, CPA; Robert E. Devlin, CPA; Patricia C. Elliott, CPA; Herb Layne, CPA; and Sol J. Meyer, CPA.

Finally, we would like to thank Marie Bareille and her staff in the Institute's publications department for their efforts on all of the production details of this manuscript.

Kenneth F. Thomas, *Director*
Federal Taxation Division

Contents

Introduction

The primary purpose of the *Guide to Federal Tax Elections* is to identify the alternative courses of action that are available under the Internal Revenue Code and the applicable rules and regulations.

Alternatives often lie buried in the mass of words that make up the code and regulations. Moreover, while alternative methods are sometimes clearly labeled "election," this is not always the case. In many instances the word "election" does not appear at all, and the reader must determine whether an alternative course of action is available.

Opportunities to use elections may be missed simply because practitioners are unaware of their existence or are unable to ferret them out. This guide is intended to help practitioners avoid missing opportunities for sound tax planning. It is recognized that certain elections may be omitted from the book; readers are encouraged to bring additional elections to the attention of the editors.

The *Guide to Federal Tax Elections* compiles the various choices available to taxpayers in code and regulations section order. Generally, the description of an election is composed of three parts—a short explanation of the election, information regarding the time and manner of making the election, and information discussing the time and manner of revocation or termination of the election. This approach provides the widest possible survey without the burden of excessive detail. If a particular election is of interest, reference is made to the official sources for further exploration.

The guide attempts to cover all elections regarding income, employment, estate, and gift taxes contained in

the Internal Revenue Code and applicable rules and regulations as they existed on September 30, 1979.

In determining whether or not an item was qualified for inclusion as an "election," the term "election" was given the broadest possible interpretation. The following definitions from Mertens' *Law of Federal Income Taxation* served as guidelines for determining the existence of an election:

> The choice of one of two rights or things, to each of which the party choosing has an equal right, but both of which he cannot have.
>
> The doctrine of election implies that a taxpayer is given the option of freely taking two courses of action; where there is no freedom of choice and the election is by compulsion, the rule is inapplicable.
>
> A necessary requirement for an "election" is that there be a "manifestation of choice," a clear exercise of the option as shown by some overt act.

Source materials used in this guide are the Internal Revenue Code, income tax regulations, and other IRS pronouncements, tax forms, and tax form instructions.

Determination of Tax Liability

Rates and Credits: Joint Returns § 2

Sec. 2
Regs. sec. 1.2-1

A husband and wife can use joint return rates by filing a joint return. (For rules on filing joint returns, see the election under sec. 6013(a).)

Rates and Credits: Income Averaging § 5

Sec. 5(b)(3)

An individual may elect to limit his tax through income averaging. (See the election under sec. 1304.)

Credit for the Elderly: Public Retirement System Income § 37

Sec. 37(e)

Taxpayers receiving income from pensions and annuities under a public retirement system may elect to claim a

§ 37 credit equal to 15 percent of the amount received by the taxpayer as retirement income, subject to limitations. The credit is available to taxpayers under or over 65 years of age, regardless of filing status.

The election is made annually on Form R or RP and is attached to the return, amended return, or claim for refund. The taxpayer may revoke the election at any time within the statute-of-limitations period.

Credit for the Elderly: Rates and Credits

Sec. 37
Regs. sec. 1.37-1(d)(2)

Married couples over age 65 filing joint returns may elect special rules for determining the retirement income credit.

The election is made annually by claiming the credit computed under such special rules on a return, amended return, or claim for refund, within the statute of limitations.

The election may be revoked at any time within the period of limitations under sec. 6511.

§ 43 Earned Income Credit

Sec. 43

For tax years beginning after 1978, a taxpayer who maintains a household for a dependent child may be eligible to claim a credit of 10 percent of the first $5,000 of income earned for the taxable year. However, if the taxpayer's earned income or adjusted gross income exceeds $6,000, the credit will be the lower of

1. The actual credit (10 percent of the first $5,000 of earned income), or
2. $500 less 12.5 percent of the amount by which his

earned income or, if higher, his adjusted gross income exceeds $6,000.

The election is computed on an earned income work sheet, provided by the IRS in each tax package that is distributed, and the credit should be claimed in the space provided on the return.

Credit for Purchase of New Residence § 44

Sec. 44
Regs. sec. 1.44
Form 5405

An individual taxpayer purchasing a new principal residence, the construction of which began before March 12, 1975, is allowed a credit against tax of up to $2,000 for 5 percent of the adjusted basis of the new residence. The residence generally must be acquired and occupied after March 12, 1975, and before January 1, 1977.

The election is made by computing the credit on Form 5405 and attaching the required written certification signed by the seller to the return.

Under certain conditions, the credit must be recaptured if the residence is disposed of within 36 months.

Targeted Jobs Tax Credit

Sec. 44B, 51, 52, 53
Temporary regs. sec. 5.44(b)-1

Employers hiring individuals from certain target groups may elect to claim a credit with respect to wages and salaries paid to these employees after 1978. The credit equals 50 percent of the first $6,000 of qualified wages paid to each individual in the first year and 25 percent of the first $6,000 of qualified wages paid to each individual in the second year. Qualified first-year wages for all employees within the target groups may not exceed 30 percent of the total FUTA wages paid by the employer during the year. Although there is no dollar limitation on the targeted

§ 44 jobs tax credit, the credit is limited to 90 percent of the employer's tax liability reduced by certain credits.

An employer may qualify for the targeted jobs tax credit by hiring

1. A handicapped individual undergoing vocational rehabilitation.
2. An individual between 18 and 24 years old who is a member of an economically disadvantaged family.
3. A Vietnam veteran under 35 years old who is a member of an economically disadvantaged family.
4. An individual receiving federal welfare benefits.
5. An individual who has received state and local general assistance for a period of at least 30 days ending not more than 60 days prior to the hiring date.
6. Any individual between 16 or 18 years old who participates in a qualified cooperative education program.
7. An ex-convict who is a member of an economically disadvantaged family.

The credit may be elected or revoked at any time before the three-year period (without regard for extensions) for filing the tax return expires.

§ 46 Investment Credit: Apportionment Among Affiliated Group Members

Sec. 46
Regs. sec. 1.46-1(f)

The first $25,000 of investment tax credit may be apportioned annually among members of an affiliated group in any manner selected by the common parent. If no election is made, the apportionment will be equal.

An annual apportionment statement and the consent of each member should be attached to the timely filed return of the parent.

The election is irrevocable after the due date of the return (including extensions).

Investment Credit: Amount of Credit

Sec. 46(a), 48(m)

In addition to the 10 percent investment credit allowed on sec. 38 property, a corporation may elect, as prescribed by the secretary, to claim as a credit an amount equal to 11 percent of the qualified investment if it transfers to an ESOP employer securities totalling the extra 1 percent in value. In addition, an extra .5 percent credit is available if the employer's transfer of additional employer securities valued at .5 percent is matched by the employees (or the employer on behalf of the employees). This election is available through 1983 but is not available to a public utility that uses the flow-through method for ratemaking purposes.

Investment Credit: Estimated Useful Life

Sec. 46
Regs. sec. 1.46-3(e)

For purposes of the investment credit, taxpayers may elect to determine the useful lives of assets either on the individual life system or a class life system, regardless of whether Rev. Proc. 62-21 concerning depreciation guidelines is employed.

Investment Credit: Multiple-Asset Accounts

Sec. 46
Regs. sec. 1.46-3(e)(3)(ii)

If the individual life system is used in determining useful lives of similar assets contained in a multiple-asset account, the taxpayer may (1) assign the average useful life used in computing depreciation or (2) assign separate lives

§ 46 based on the estimated range of years taken into consideration in establishing average useful life.

Investment Credit: Qualified Progress Expenditures

Sec. 46

An electing taxpayer may have his qualified investment for the year increased by his aggregate qualified progress expenditures for the year.

The election is made in accordance with the regulations. Once made, it is revocable only with consent of the commissioner.

§ 47 Investment Credit: Dates of Additions and Retirements

Sec. 47
Regs. sec. 1.47-1(c)(2)

In determining the useful life of sec. 38 property where an early disposition occurs, a taxpayer may elect to use either

1. The assumed dates used under an averaging convention for the purpose of computing depreciation.
2. The actual dates the property was placed in service or disposed of.

An averaging convention, when used, must be consistently applied to the accounts for which it is adopted and must be applied to both additions and retirements. Also, an averaging convention may not be used if it results in a substantial distortion of the investment credit.

Investment Credit: Treatment of Mass Assets

Sec. 47
Regs. sec. 1.47-1(e)(2)

Taxpayers may meet certain record-keeping requirements for mass assets by using an appropriate mortality

dispersion table or a standard mortality dispersion table prescribed by the commissioner.

If the standard mortality dispersion table is chosen, it must be used for subsequent years unless the commissioner consents to a change.

Investment Credit: Useful Life

Sec. 47
Regs. sec. 1.47-1(e)(3)(i)

Taxpayers determining useful lives based on separate lives for similar assets in a mortality dispersion table may treat such assets as having been disposed of in the order of the estimated useful lives that were assigned to those assets, or they may use the specific lives of the asset actually disposed of.

Investment Credit: Asset Disposal Dates

Sec. 47
Regs. sec. 1.47-1(e)(3)(iii)

For purposes of determining qualified investment, taxpayers who do not elect to use a mortality dispersion table with respect to similar assets, but who assign to such assets separate lives, may select the order in which such assets will be considered as disposed of, regardless of the taxable years in which these assets were placed in service.

Taxpayers must continue to use this method once it has been elected; any change requires the consent of the district director. The request for change must be submitted on or before the last day of the taxable year for which the change is sought.

Investment Credit: Disposal and Reselection of Used Property

Sec. 47
Regs. sec. 1.47-3(d)

If used sec. 38 property for which the investment credit was taken is disposed of, the taxpayer may (if more than

$100,000 of used property was acquired in the year that property was placed in service) reselect other used property.

The election is made by attaching a statement to the return identifying the taxpayer, the month and year in which both the originally selected and newly selected used property were placed in service, and the cost and estimated useful life of each.

Investment Credit: Recapture and Subchapter S

Sec. 47
Regs. sec. 1.47-4(b)

If an electing subchapter S corporation and its shareholders execute an agreement to be joint and severally liable for the recapture of the investment credit claimed by the corporation prior to making the sec. 1372 election, no recapture will occur by reason of the selection of subchapter S status.

To elect this treatment, the agreement must be signed by the corporation and its shareholders. The agreement must be executed on the first day of the first taxable year for which a subchapter S election is made or on the date of that election, whichever is later. It should be filed with the district director with whom the corporation files its return on or before the due date of the return (including extensions) for the year preceding the year the subchapter S election is effective. If good cause is shown, the district director may permit the agreement to be filed late.

Sec. 38 property shall not be considered to be disposed of solely by reason of a corporation's termination or revocation of its election under sec. 1372.

§ 48 Investment Credit: Selection of Used Property

Sec. 48
Regs. sec. 1.48-3(c)(4)

Where the cost of used property placed in service during the year exceeds $100,000, the taxpayer may select the

particular assets to be used in computing qualified investment.

Selection is made by taking into account the property for purposes of determining qualified investment and maintaining records that permit identification of property selected.

Property not originally selected may be reselected if the originally selected property is disposed of and recapture would otherwise apply. (See the election under regs. sec. 1.47-3(d).)

Investment Credit: Movie and Television Films

Sec. 48(k)
Temporary regs. sec. 7.48-2

A qualified taxpayer is entitled to investment credit with respect to motion picture film or video tape, which is now sec. 38 property.

For property placed in service after 1974 the taxpayer may compute the credit at the rate of two-thirds of a full credit, regardless of actual life, or by the "90 percent method," which presumes that useful life ends when 90 percent of the property's basis is recovered through depreciation. On the original return, useful life is estimated, and recapture occurs when actual life is less than estimated.

Initial election of the "90 percent method" is to be made under the regulations. This election may not be revoked by the taxpayer or a related entity without consent of the commissioner.

Investment Credit: Leased Sec. 38 Property

Sec. 48
Regs. sec. 1.48-4(a)

A lessor of sec. 38 property may elect to treat the lessee as a purchaser of such property for purposes of the investment credit.

The lessor makes the election by filing with the lessee a statement providing the information set forth in regs. sec. 1.48-4(f) or 1.48-4(g)(2) on or before the due date of the

§ 48 lessee's return (including extensions) for the year in which possession of the property is transferred to the lessee.

The election is irrevocable.

§ 57 Minimum Tax: Aggregation of Multiple Leases

Sec. 57(c)(2)
Temporary regs. sec. 12.8(b)

If a single parcel of real property is leased under two or more leases, the lessor may elect to treat all the leased portions of such property as subject to a single lease when applying the "net lease test" called for in sec. 57(c)(1)(A). By electing this procedure, the lessor can avoid the allocation problems that will arise when a single parcel of property is divided and rented as a number of separate units. The term "parcel of real property" includes leases on adjacent properties.

Minimum Tax: Elimination of "15 Percent Net Lease Test"

Sec. 57(c)(3)
Temporary regs. sec. 12.8(c)

When real property has been in use for more than five years, the taxpayer may elect not to be subject to the "15 percent net lease test" imposed by sec. 57(c)(1)(A). If the taxpayer makes this election, any lease of real property that has been in use for more than five years will not be treated as a net lease as a result of the 15 percent test.

The election is made on a year-to-year basis. In the case of members of a partnership, the election is made on an individual basis and not by the partnership. (See sec. 703(b).)

Straight-Line Recovery of Intangibles

Sec. 57(d)

For purposes of determining the portion of intangible drilling expenses that shall be a tax preference, a taxpayer

may elect either straight-line amortization over a 10-year period or recovery over the life of the well.

Minimum Tax: Allocation of $10,000 Exemption § 58

Sec. 58(b)
Regs. sec. 1.58-1(c)(3)

Members of a controlled group of corporations may elect to allocate the $10,000 minimum tax exemption in some manner other than equally.

The election is made by having all members of the group consent to an apportionment plan with respect to a particular December 31. Each member of the group must file a copy of the consent statement with its return.

An unequal apportionment plan for any December 31 may be adopted at any time as long as there is at least one year remaining in the statutory period for the assessment of the deficiency against any member whose tax would be increased by adoption of the plan.

Once an apportionment plan is adopted, it remains in effect until amended.

Computation of Taxable Income

Gross Income: Blocked Foreign Income § 61

Sec. 61

A taxpayer may elect to defer reporting blocked foreign income.

The election is made on a separate income tax form of the same type as the regular form covering the deferred income and deductions. The form must be headed "Report of Deferrable Foreign Income Pursuant to Mimeograph 6475." The taxpayer must state that his deferrable foreign income "will be included in taxable income when it ceases to be deferrable income." The election may be made for all years not closed by statute and all intervening years.

The election is terminated by applying to the commissioner for a change of accounting method on Form 3115 within 180 days after the beginning of the taxable year of termination.

Annuities: Annuity vs. Lump Sum § 72

Sec. 72(h)

Contracts sometimes provide that an annuity may be elected in lieu of a lump-sum payment. If the option is exercised, then no part of the lump sum shall be included in income at the time the lump sum first becomes payable.

The option to receive an annuity must be exercised

§ 72 within 60 days after the lump-sum payment becomes payable.

§ 77 Commodity Credit Corporation Loans: Treatment as Income

Sec. 77(a)
Regs. sec. 1.77-1
Form 3115

The taxpayer may elect to treat loans from the Commodity Credit Corporation as income.

The election is made by including the amount of such loans in income in a timely filed return for the year in which the loan is received. Thereafter, the taxpayer must include in income the amount of all subsequent loans received from the Commodity Credit Corporation. The election may be terminated by applying to the commissioner for a change of accounting method on Form 3115 within 180 days after the beginning of the year of change.

§ 83 Restricted Property: Inclusion in Income

Sec. 83(b)
Regs. sec. 1.83-2

A taxpayer may elect to include in gross income the excess of value over cost of restricted property in the year of transfer rather than in the first taxable year in which the property becomes transferable or is not subject to a substantial risk of forfeiture.

To make the election, the recipient of the restricted property must file two copies of a statement with the Internal Revenue Service center where he files his return not later than 30 days after the property was transferred. The statement should contain the taxpayer's name, address, identification number, and the taxable year. It should also include a description of the property for which the election

is being made, the date on which the property was transferred, the nature of the restriction on the property, its fair market value at the time of transfer without regard to any restrictions (except those that will never lapse), and the amount (if any) paid for the property.

This election may not be revoked without the commissioner's consent.

Interest on Governmental Obligations: Industrial Development Bonds — § 103

Sec. 103(b)(6)(D)
Regs. sec. 1.103-10

Generally, industrial development bond issues of more than $1 million do not qualify as tax-free municipal bonds. However, if certain conditions are met, a governmental unit may elect to have an aggregate of $10 million of such bonds qualify as tax-free municipal bonds.

The election is made in a statement signed by an authorized official of the governmental unit. It should be filed prior to the issuance of the bonds at the place where the principal user of the facilities—acquired, constructed, reconstructed, or improved with the proceeds of such issue—will file its income tax return for the taxable year for which the election is made. A copy of the statement should be attached to the income tax return of the principal user for such taxable year. (For information to be included in the statement, see regs. sec. 1.103-10(b)(2)(vi)(b).)

For the industrial development bonds to continue to qualify as an exempt small issue, supplemental statements of subsequent capital improvements must be filed by the user in accordance with regs. sec. 1.103-10(b)(2)(vi)(c).

Sick Pay and Certain Disability Provisions — § 105

Sec. 105(d)

When a permanently or totally disabled taxpayer reaches age 65, amounts received under a disability plan are taxable

§ 105 under the annuity rules. A taxpayer may irrevocably elect at any earlier time to treat these payments under the annuity rules.

§ 108 Discharge of Indebtedness: Exclusion From Income

Sec. 108
Regs. sec. 1.108(a)(1), (2)
Form 982

A taxpayer may avoid income on discharge of business indebtedness by consenting to adjust the basis of property under sec. 1017.

To make the election, the taxpayer should file a consent on Form 982 with his tax return. The commissioner will accept an amended return or claim for refund when, for reasonable cause, the taxpayer has failed to file the consent with his original return.

§ 121 Sale of Residence: Lifetime Exclusion

Sec. 121

After July 26, 1978, taxpayers aged 55 or older may elect to exclude up to $100,000 of the gain realized on the sale of a principal residence. Married taxpayers filing separate returns may exclude $50,000 on each separate return.

In addition to the age requirement, in order to qualify for the exclusion a taxpayer must have owned the dwelling and used it as a principal residence for at least three years of the five-year period ending on the date of sale.

The election is available to a taxpayer on a once-in-a-lifetime basis. Also, the election does not apply separately to each spouse. However, if both taxpayers have utilized the exclusion prior to their marriage, there will be no recapture of the tax attributable to the gain previously excluded by either spouse.

The election is made by filing Form 2119 with the taxpayer's return for the year in which the residence was sold.

Sale of Residence: Over Age 65

Sec. 121
Regs. sec. 1.121-4
Form 2119

Taxpayers over age 65 may elect to exclude from gross income the gain realized on the first $35,000 of the adjusted sales price of their residences.

The election is made by excluding the gain from gross income on the taxpayer's return. The taxpayer should file Form 2119 with his return indicating the election and including the information required in regs. sec. 1.121-4(b). In the case of a married taxpayer, both husband and wife must make the election.

Revocation can be made any time before expiration of the period for a refund claim. In the case of married taxpayers, the taxpayer cannot revoke unless his spouse joins him in the revocation.

The Revenue Act of 1978 repealed this provision effective for sales made after July 26, 1978, and adopted the $100,000 once-in-a-lifetime exclusion discussed above. However, a taxpayer, age 65 or older, who does not meet the three-out-of-five-year rule of the new law, may still select the old rule on sales made before July 26, 1981.

The fact that a taxpayer age 65 or older made the prior election to exclude gain on the pre-July 27, 1978, sale of a residence will not prevent the taxpayer from electing the new $100,000 exclusion.

Cafeteria Plans: Exclusion of Employer Contributions § 125

Sec. 125

Beginning in 1979, an employer's contributions under a written cafeteria plan are excludible from a participant's

§ 125 gross income to the extent that nontaxable benefits are selected (if the plan permits the participant to elect between taxable and nontaxable benefits).

The plan must not discriminate in regard to eligibility requirements, highly compensated individuals, or the level of contributions or benefits with respect to highly paid individuals. If a plan is found to be discriminatory, the employer's contributions will be included in the highly paid individual's gross income to the extent that the individual could have elected taxable benefits under the plan.

§ 152 Dependents: Multiple Support

Sec. 152(c)
Regs. sec. 1.152-3
Form 2120

A dependency exemption may be claimed under a multiple support agreement where no one person alone furnished more than half of a dependent's support.

The election is made by claiming an exemption on the return for the taxable year and attaching to Form 2120 a declaration from each person furnishing more than 10 percent support that he will not claim the exemption.

§ 162 Business Expenses: Incidental Materials and Supplies

Sec. 162
Regs. sec. 1.162-3

The cost of incidental materials and supplies purchased during the year and for which no records are kept or inventories taken may be deducted in the year purchased.

No formal election is required. The taxpayer may deduct these items unless this method does not clearly reflect income.

Revocation of this method is a change of accounting method and requires the commissioner's consent.

Investment Interest: Real Property Net Lease — § 163

Sec. 163(d)(6)
Temporary regs. sec. 12.8

If a parcel of real property is leased under two or more leases, a taxpayer may elect to combine them in order to determine if they are net leases under the 15 percent test. Also, property in commercial use for more than five years may be omitted from the 15 percent test. Both elections must be made annually by the date for filing the return (including extensions) by attaching a statement to the return.

Disaster Loss: Year of Deduction — § 165

Sec. 165
Regs. sec. 1.165-11

A taxpayer may elect to deduct a subsequent year's disaster loss in the immediately preceding year. This provision applies only to those areas designated by the president as disaster areas eligible for federal aid.

The election is made by filing a return, an amended return, or a claim for refund clearly showing the election. The election should state the time of the disaster and the location of the property damaged. The election must be made by the later of (1) the due date (not including extensions) of the return of the year of the disaster or (2) the due date (including extensions) of the return for the immediately preceding taxable year.

The election is irrevocable 90 days after it is made.

Bad Debts: Partial Worthlessness — § 166

Sec. 166(a)(2)
Regs. sec. 1.166-3

Taxpayers may elect to write off that portion of a business bad debt that is partially worthless.

§ 166 The election is made by taking a deduction on the tax return. The taxpayer must be able to substantiate partial worthlessness.

Bad Debts: Treatment

Sec. 166(c)
Regs. sec. 1.166-1, -4
Form 3115

A taxpayer may elect to take business bad debts into account either (1) as a deduction when they become worthless or (2) as a deduction for a reasonable addition to the reserve for bad debts. (For financial institutions, see secs. 585(b), 586, and 593.)

Either method may be selected (subject to the district director's approval upon examination) in the return for the first taxable year for which the taxpayer is entitled to a bad debt deduction.

The commissioner's approval is required to change the method selected. Such approval is normally granted if Form 3115 is filed within 180 days after the beginning of the taxable year of change.

§ 167 Depreciation: Accounting for Property

Sec. 167
Regs. sec. 1.167(a)-7

Depreciable property may be accounted for by treating each individual item as an account or by combining two or more assets in a single account. The taxpayer may establish as many accounts for depreciation as he desires.

To make the election, taxpayers need only file a return using the method selected.

Revocation of this election is considered a change of accounting method and requires the approval of the commissioner.

Depreciation: Choice of Method

Sec. 167(b)
Regs. sec. 1.167(b)-0

The taxpayer may compute depreciation by any of the following methods: (1) straight-line, (2) declining-balance, (3) sum-of-the-years digits, or (4) any other reasonable method (with limitations).

To make the election, the taxpayer should compute depreciation under the desired method on his return. Additional elections can be made for any part or all of each year's acquisitions.

A taxpayer may change from any declining-balance method to the straight-line method without consent. (See regs. sec. 1.167(e)-1(b); for sec. 1250 property, see regs. sec. 1.167(e)-1(d).) Other changes are considered a change of accounting method and require consent.

Depreciation: Rates and Life

Sec. 167
Regs. sec. 1.167(d)-1

A taxpayer may enter into an agreement with the IRS concerning asset useful life and depreciation rates.

To do this, the taxpayer must file an application with the district director in accordance with the requirements of regs. sec. 1.167(d)-1. The agreement must be in writing and signed by both the taxpayer and the district director.

The agreement is irrevocable until facts and circumstances not taken into account in making the agreement are shown to exist by the party wishing to modify it.

Depreciation: Change of Method

Sec. 167(e)
Regs. sec. 1.167(e)-1

A change from a declining-balance method to the straight-line method of depreciation may be elected at any time during the useful life of the property.

To make the change, the taxpayer should attach a written statement to his return for the taxable year of change giving details required by regs. sec. 1.167(e)-1(b). The permission of the commissioner is not necessary.

Once the straight-line method has been adopted, an application to the commissioner for a change of accounting method is required.

Depreciation: Reduction of Salvage Value

Sec. 167(f)
Regs. sec. 1.167(f)-1

The taxpayer may elect to reduce the salvage value used in computing depreciation by an amount not to exceed 10 percent of the depreciable basis of personal property and certain intangible personal property.

The election is made by selecting the items and computing their depreciation after reducing the salvage value. The election must be made at the time the salvage value is required to be determined.

Depreciation: Low-Income Rental Housing

Sec. 167(k)
Regs. sec. 1.167(k)-4
Proposed regs. sec. 1.167(k)-1, -2, -3, -4

In lieu of any other method of depreciation in connection with low-income housing, a taxpayer may elect to depreciate certain rehabilitation expenditures incurred after July 24, 1969, and before January 1, 1982, by the straight-line method, using a life of 60 months and no salvage value. The election may also be made with respect to a qualifying expenditure made after December 31, 1981, if pursuant to a binding contract entered into before January 1, 1982.

The election should be made in accordance with regs. sec. 1.167(k)-4. It must be filed no later than the time for filing the return (including extensions) for the year in which the property is placed in service. If the return for that year is not timely filed, the election should be made at the time the first return for that year is filed.

The election may be revoked without permission at any time before the time for filing a return (including extensions) for any year in which any part of the 60-month period falls. Automatic revocation can occur if certain specified tests are not met.

Depreciation: Asset Depreciation Range System

Sec. 167(m)
Regs. sec. 1.167(a)-11
Form 4832

A taxpayer can elect to use the ADR system of depreciation. Under ADR, taxpayers use a class life range, instead of the asset's useful life, to compute depreciation for all eligible property [regs. sec. 1.167(a)-11(b)(5)(ii)].

The election is made by filing Form 4832 (or the equivalent information) with the income tax return for the taxable year in which the property is first placed in service. If the taxpayer does not file a timely return (including extensions), the election must be filed when the taxpayer files his first return for that year. The election may be made by an amended return only if such amended return is filed no later than the time prescribed by law for filing the return for the year of election (including extensions). Generally, the election for a taxable year applies to all additions of eligible property during the taxable year of the election but does not apply to additions of eligible property in any other taxable year. (See regs. sec. 1.167(a)-11(f) for the complete requirements for making this election.)

The election may not be revoked after the time for filing the election has expired [regs. sec. 1.167(a)-11(f)(3)].

Depreciation: ADR—Used Property Rule

Sec. 167(m)
Regs. sec. 1.167(a)-11(b)(5)(iii)
Form 4832

A taxpayer may exclude all (but not less than all) used property from the ADR election if the unadjusted basis of such property exceeds 10 percent of the unadjusted basis

of all eligible property placed in service during the taxable year of the election and if no specific used property guideline class is in effect for the taxable year. For purposes of this election, *used property* means property whose original use does not commence with the taxpayer.

The election is made on Form 4832 for the taxable year. The amount of the unadjusted basis of the used property first placed in service should be included on the form. Any information required by regs. sec. 1.167(a)-11(f) should also be provided.

Once made, the election may not be revoked after the time prescribed for filing the election.

Depreciation: ADR—Investment Credit Property

Sec. 167(m)
Regs. sec. 1.167(a)-11(b)(5)(iv)

If a taxpayer has elected to use the ADR system of depreciation, he may exclude from eligible property any property first placed in service which either qualifies for the investment credit or replaces investment credit property and thus reduces recapture. The election to exclude investment credit property from ADR property may be made with regard to all or less than all such property.

This election, like all ADR elections, must be made in accordance with regs. sec. 1.167(a)-11(f).

Depreciation: ADR—Subsidiary Assets

Sec. 167(m)
Regs. sec. 1.167(a)-11(b)(5)(vii)

If a taxpayer has elected to use the ADR system, he may then elect to exclude all, but not less than all, subsidiary assets first placed in service during the taxable year of election in an asset guideline class. The term *subsidiary assets* includes jigs, dies, molds, glassware, returnable containers, and certain other equipment specified in the regulations.

The election may be made provided that

1. The unadjusted basis of eligible subsidiary assets placed in service during the year is equal to 3 percent or more of all eligible property first placed in service in the class during the year, and
2. The subsidiary assets are first placed in service before the earlier of (*a*) the effective date of the first supplemental asset guideline class including such subsidiary assets or (*b*) January 1, 1974.

This election, like all ADR elections, must be made in accordance with regs. sec. 1.167(a)-11(f).

Depreciation: ADR—Averaging Conventions

Sec. 167(m)
Regs. sec. 1.167(a)-11(c)(2)
Form 4832

A taxpayer using the ADR system can adopt either the "half-year" or the "modified half-year" convention described in regs. sec. 1.167(a)-11(c)(2) for purposes of computing the allowance for depreciation of a vintage account. The first-year conventions apply to all additions and to all extraordinary retirements from a vintage account. (For a definition of "extraordinary retirement," see regs. sec. 1.167(a)-11(d)(3)(ii); "vintage account" is found in regs. sec. 1.167(a)-11(b)(3).)

Modified half-year convention. All property in a vintage account placed in service during the first half of the taxable year is treated as placed in service on the first day of the taxable year. All property in the account placed in service during the last half of the taxable year is treated as placed in service on the first day of the succeeding taxable year. The same treatment is given to all extraordinary retirements during the year, depending upon which half of the year the asset is retired.

Half-year convention. All property in a vintage account is treated as placed in service on the first day of the second half of the taxable year. All extraordinary retirements during the year are afforded the same treatment.

The election of a convention is made at the time the taxpayer makes the general ADR election and is indicated by checking the appropriate box on Form 4832. The same convention must be applied to all vintage accounts in any taxable year, but a different convention may be elected each year. (See regs. sec. 1.167(a)-11(f) for the information required to make the election.)

The election may not be revoked or modified after the time for filing the election.

Depreciation: ADR—Repair Allowance

Sec. 167(m)
Regs. sec. 1.167(a)-11(d)(2)
Form 4832

A taxpayer using the ADR system can elect to apply certain "repair allowance" procedures described in regs. sec. 1.167(a)-11(d)(2)(iii). Under this procedure, the cost of repairs for each asset guideline class is treated as a deductible item if the amount falls within the repair allowance percentages set forth in Rev. Proc. 77-10. Repair costs in excess of these percentages for the taxable year must be capitalized in a single vintage account called a special-basis vintage account. (For treatment of these excess repair costs and the special-basis vintage account in which they are placed, see regs. sec. 1.167(a)-11(d)(2)(viii) and (3)(vi).) The repair allowance election is designed to minimize potential controversy about whether an item should be capitalized or is a deductible expenditure.

An election is made each year regarding whether or not to use the repair allowance for an asset guideline class with the return for the taxable year. Part II of Form 4832 must be filled out for each guideline class for which the election is made. The election can be made only if books and records sufficient to determine the information necessary for its application are maintained (see regs. sec. 1.167(a)-11(d)(2)(v)) and must meet the requirements of regs. sec. 1.167(a)-11(f).

The election may not be revoked or modified after the time for filing the election.

Depreciation: ADR—Allocation of Indirect Costs to Repairs

Sec. 167(m)
Regs. sec. 1.167(a)-11(d)(2)(ii)(b)

If a taxpayer has not elected to use the repair allowance procedures (see the election under regs. sec. 1.167(a)-11(d)(2)) in accounting for expenditures for repairs, such expenditures need not include indirect costs except to the extent the taxpayer allocates such costs to repairs, and so forth, for financial reporting purposes. However, the taxpayer may, at his option, consistently include an allocation of indirect costs in such expenditures without regard to whether they are included in financial reports.

This election, like all ADR elections, must be made in accordance with regs. sec. 1.167(a)-11(f).

Depreciation: ADR—Treatment of Special-Basis Vintage Account

Sec. 167(m)
Regs. sec. 1.167(a)-11(d)(3)(vi)

In the event of an extraordinary retirement of repair allowance property in a vintage account (or in the case of certain abnormal retirements of assets not in a vintage account), a taxpayer may elect to allocate the basis of all special-basis vintage accounts for the guideline class to the retired assets.

The election to allocate basis is made on the tax return for the taxable year of the election. The allocation is made in the proportion that the adjusted basis of the retired asset (as of the beginning of the year) bears to the adjusted basis of all repair allowance property in the guideline class at the beginning of the year. The election to allocate can only be made if it is consistently applied to all such extraordinary and abnormal retirements in the taxable year. The allocation must also be adequately identified in the taxpayer's books and records. The information necessary to make this election should be provided in accordance with regs. sec. 1.167(a)-11(f).

Once made, this election may not be revoked after the time for filing the election.

Depreciation: ADR—Reduction of Salvage Value As Retirement Occurs

Sec. 167(m)
Regs. sec. 1.167(a)-11(d)(3)(vii)(b)
Form 4832

A taxpayer may, at his option, follow the consistent practice of reducing the salvage value for a vintage account as *all* retirements occur or *only* as extraordinary but not ordinary retirements occur, in lieu of adding the proceeds from ordinary retirements to the depreciation reserve as prescribed in regs. sec. 1.167(a)-11(d)(3)(iii). By so electing, the taxpayer may be able to avoid the consequences of regs. sec. 1.167(a)-11(d)(3)(ix), which calls for the recognition of gain in the event the depreciation reserve of a vintage account exceeds its unadjusted basis.

The election should be made within the time and in the manner prescribed by regs. sec. 1.167(a)-11(f).

Depreciation: ADR—Ordinary Retirement by Transfer to Scrap

Sec. 167(m)
Regs. sec. 1.167(a)-11(d)(3)(vii)(d)

In the case of retirements by transfers to scrap or supplies, if the taxpayer consistently follows the practice of reducing the salvage value of a vintage account as ordinary retirements occur (see the election under regs. sec. 1.167(a)-11(d)(3)(vii)(b), above), the taxpayer may either

1. Follow the consistent practice of reducing the salvage value of the account by the amount of salvage value attributable to the retired asset and not adding the same amount to the depreciation reserve, in which case the basis of the supplies or scrap account will be zero, or
2. Follow the consistent practice of reducing the salvage value of the account by the amount of salvage value attributable to the retired asset and adding the same amount to the account's depreciation reserve as long as

the depreciation reserve is not increased to an amount in excess of the account's unadjusted basis. In this case, the basis in the supplies or scrap account will be the amount added to the depreciation reserve upon the transfer to scrap or supplies.

Depreciation: ADR—Ordinary Retirement by Transfer to Scrap—Special Option

Sec. 167(m)
Regs. sec. 1.167(a)-11(d)(3)(viii)

In the case of retirements by transfers to scrap or supplies, if the taxpayer does not follow the consistent practice of reducing the salvage value of a vintage account as ordinary retirements occur, then the taxpayer may determine the basis of assets retired under either

1. The method outlined in regs. sec. 1.167(a)-11(d)(3)(vii)(c) and (d) (see the election under regs. sec. 1.167(a)-11(d)(3)(vii)(d)), or
2. The consistent practice of subtracting from the salvage value of the vintage account (to the extent thereof) the value of the retired asset (as determined in accordance with the regulations), and then adding to the depreciation reserve of the same vintage account the greater of (*a*) the amount subtracted from the salvage value of the account or (*b*) the value of the asset as previously determined.

If the taxpayer follows the alternative procedures outlined in this election, the reserve for depreciation of the vintage account could exceed the account's unadjusted basis and result in recognition of gain.

Substantially Rehabilitated Historic Property

Sec. 167(o)

A taxpayer may elect to compute the depreciation deduction attributable to substantially rehabilitated historic property as if the original use of such property began with the taxpayer. *Substantially rehabilitated historic property*

§ 167 is any certified historic structure with respect to which the additions to capital accounts for any certified rehabilitation during the 24-month period ending on the last day of any tax year, reduced by any amount allowed (or allowable) as depreciation (or amortization) with respect thereto, exceed the greater of (1) the adjusted basis of such property or (2) $5,000. The election is effective for additions to capital accounts occurring after June 30, 1976, and before July 1, 1981. (See sec. 191.)

§ 169 Amortization: Pollution Control Facility

Sec. 169(b)
Regs. sec. 1.169-4

A taxpayer may elect to amortize a certified pollution control facility on a straight-line basis over 60 months in lieu of claiming a depreciation deduction under sec. 167. Taxpayers may begin the 60-month amortization period with the month following the month the facility is completed or acquired, or with the succeeding taxable year.

The election must be made not later than the time for filing the income tax return (including extensions) for the taxable year in which the deduction is first claimed. The election is made by filing a statement with the return setting forth the information called for by the Treasury regulations.

The election may be revoked by the taxpayer at any time by notifying the commissioner in writing beforehand that he intends to discontinue the amortization deduction at the beginning of a specified month. Once an election has been revoked, it may not be reinstated with respect to the facility to which it applied [sec. 169(c)].

§ 170 Contributions: Timing of Deduction by a Corporation

Sec. 170(a)(2)
Regs. sec. 1.170-3(b)

An accrual basis corporation may elect to deduct charitable contributions in the year authorized by its board of directors rather than in the year in which paid.

The election must be made by claiming the contribution at the time of filing the return for the taxable year of accrual. A copy of the board of directors' resolution and a written declaration signed by an officer that the resolution was adopted should be attached to the return. Contributions must be paid by the 15th day of the third month following the close of the year.

Contributions of Capital Gain Property: Ceiling for Individuals

Sec. 170(b)(1)(C)
Regs. sec. 1.170A-8

A donor of capital gain property otherwise subject to the 30 percent ceiling on charitable contributions may elect a 50 percent ceiling if he is willing to reduce the amount of his contributions so that it is equal to his basis plus one-half of any appreciation in the property contributed.

If the election is made, it applies to all capital gain property contributed in the taxable year as well as to any carryovers of contributions of capital gain property from prior years for which an election was not made.

The election is made annually by attaching a statement to the income tax return for the taxable year indicating that the election under sec. 170(b)(1)(C)(iii) is being made.

Bond Premium: Amortization — § 171

Sec. 171(c)
Regs. sec. 1.171-3

The election to amortize corporate bond premiums on *partially tax-exempt* bonds is available *only* to individuals. The election to amortize corporate bond premiums on *wholly taxable* bonds is available to *all* taxpayers.

The election is made by the taxpayer's claiming a deduction (with a statement showing the computation) in his return for the first year to which the election applies. The election is binding also with respect to all bonds of the same class subsequently acquired and for all subsequent taxable years.

Upon application by the taxpayer, the secretary may

 permit revocation subject to such conditions as the secretary deems necessary.

§ 172 Foreign Expropriation Loss: Treatment

Sec. 172(b)(3)(C)
Regs. sec. 1.172-11

In lieu of the usual carryback and carryover rules, a taxpayer may elect to carry over to each of ten succeeding years the portion of a net operating loss attributable to foreign expropriation losses.

The election is made by attaching a statement containing the information required by regs. sec. 1.172-11(c)(3) to a timely filed return for the year of the foreign expropriation loss.

The election is irrevocable.

Forego Three-Year Carryback Period

Sec. 172(b)(3)(C)

A taypayer may irrevocably elect to forego the three-year carryback period for a net operating loss (NOL) and carry the loss forward only. The taxpayer must make this election by the date for filing his return (including any extensions) for the taxable year in which the net operating loss was incurred. The election applies to NOLs incurred in tax years ending after 1975.

§ 173 Circulation Expenses: Treatment

Sec. 173
Regs. sec. 1.173-1(c)

The taxpayer may elect to capitalize circulation expenses of newspapers, magazines, or other periodicals properly chargeable to a capital account instead of deducting them currently.

The taxpayer can make the election by attaching a

statement to the return for the year the election is made. Once made, the election is binding upon all subsequent circulation expenditures properly chargeable to a capital account.

Permission to revoke the election may be granted by the commissioner upon written application, subject to such conditions deemed necessary by the commissioner.

Research and Experimental Expenses: Treatment — § 174

Sec. 174(a)
Regs. sec. 1.174-3

Research and experimental expenditures may be treated as expenses in lieu of charging them to capital account.

The election is made by claiming such expenses as a deduction on the taxpayer's income tax return in the first year for which such expenditures are paid or incurred. However, the permission of the commissioner is required to adopt this method after the first year such expenses are incurred.

A change of method may be obtained by application to the commissioner. It must be filed not later than the last day of the first taxable year for which the change in method is to apply.

Research and Experimental Expenses: Deferral

Sec. 174(b)
Regs. sec. 1.174-4

A taxpayer may elect to amortize expenditures that are not treated as expenses under sec. 174(a) and that are chargeable to a capital account but are nondepreciable. If no election to expense or to amortize is made, the expenditures are capitalized. The amortization period cannot be less than 60 months.

The election is made by attaching a statement to a timely filed return for the first taxable year to which the election applies. The statement should be signed by the taxpayer

 and must contain the information required by regs. sec. 1.174-4(b)(1).

A change to a different method requires permission from the commissioner. An application to change should be filed no later than the last day of the year of change and should contain the information specified in regs. sec. 1.174-4(b)(2).

Research and Experimental Expenses: Cost of Developing Computer Software

Sec. 174(a), (b)
Regs. sec. 1.174-3, -4
Rev. Proc. 69-21

Taxpayers may elect to treat all the costs of developing computer software as a current expense or as capital expenditure recoverable through amortization.

Either method may be adopted by the taxpayer by using such method and claiming the deduction arrived at (1) in the first taxable year in which such expenses are incurred under the current expense method or (2) in the first taxable year that the taxpayer realizes benefits from the expenditures under the deferral method. (See regs. sec. 1.174-3 and -4.)

The election of one of the above procedures will be treated as a method of accounting, and any change in procedure requires the consent of the commissioner. (See sec. 446.)

§ 175 Soil and Water Conservation Expenses: Treatment

Sec. 175
Regs. sec. 1.175-1, -6

A farmer may deduct currently certain soil and water conservation expenditures. If this method is not adopted, such expenditures are added to the basis of the related property. The district director's consent may be obtained to have the election apply or not apply to special projects or to a single farm. The election is subject to a gross income limitation.

Adoption of this method should be made by claiming

the deduction in the first year these expenditures are paid or incurred. Adoption can also be accomplished by consent of the district director. The request should be filed no later than the date for filing the return for which the adoption is to take effect.

Once this method has been adopted, it must be used in subsequent years unless a consent to change is obtained. To obtain the consent of the district director, a request for change should be filed no later than the date for filing the return for which the change is to take effect. (See regs. sec. 1.175-6(c).)

Trademarks and Trade Names: Treatment § 177

Sec. 177
Regs. sec. 1.177-1

The taxpayer may elect to amortize trademark and trade name expenditures over at least 60 months. If no election to amortize is made, the expenditures are capitalized.

The election is made in a statement attached to a timely filed return (including extensions) for the year of expenditure. (See regs. sec. 1.177-1(c).) The deduction must begin with the first month of the taxable year in which the expenditure is paid or incurred.

The election is irrevocable for each particular trademark or trade name, but separate elections may be made with respect to other trademarks or trade name expenditures.

Depreciation: Additional First-Year Allowance § 179

Sec. 179(c)
Regs. sec. 1.179-1, -2, -3, -4

A taxpayer may elect to claim an additional first-year depreciation allowance. This allowance is subject to certain dollar and property-type limitations. Affiliated groups are subject to certain allocation restrictions.

The election is accomplished by showing as a separate item on a timely filed return (including extensions) the amount claimed under sec. 179. Affiliated groups are subject to certain other filing requirements.

§ 179 This election is irrevocable unless a request to revoke is filed with the commissioner as outlined in regs. sec. 1.179-4(b) no later than six months after the due date of the return (excluding extensions).

§ 180 Farmers: Fertilizer Expenditures

Sec. 180
Regs. sec. 1.180-1, -2

Expenditures by farmers for fertilizer and other materials that enrich, neutralize, and condition land, otherwise chargeable to capital account, may be expensed.

The taxpayer makes the election by claiming a deduction on his return. It is effective only for the year claimed.

The election can be revoked by filing with the district director, within the period of limitations, a request for consent to change as set forth in regs. sec. 1.180-2.

§ 182 Farmers: Land-Clearing Expense

Sec. 182
Regs. sec. 1.182-1, -6

Farmers may elect to expense land-clearing expenditures that would otherwise be capitalized. The amount of land-clearing expense which may be deducted in any one year is limited. (See regs. sec. 1.182-5.)

To make the election, the taxpayer should attach a statement to a timely filed return (including extensions) as set forth in regs. sec. 1.182-6(a). The election applies only to the year for which it is made.

Requests for consent to revoke the election should be made in a letter to the district director in accordance with regs. sec. 1.182-6(b). Tax consequence is not acceptable as the sole reason for requesting a change.

§ 183 Suspension of Hobby Loss Presumption

Sec. 183(e)
Temporary regs. sec. 12.9
Regs. sec. 1.183-1(c)(1)

An activity is presumed to be engaged in for profit (and not a hobby loss) if the activity produces a profit in any

two or more tax years out of five consecutive years ending with the current year. After 1969 an individual or subchapter S corporation may elect to suspend this presumption until five tax years from the time the activity is started. Taxpayers must file a statement with the IRS no later than three years after the due date of the return for the year the activity is started.

Railroad Rolling Stock: Amortization — § 184

Sec. 184(b), (c)

Taxpayers may elect to amortize qualified railroad rolling stock on a straight-line basis over a period of 60 months in lieu of claiming depreciation. Under the 60-month rule, the taxpayer may elect to begin to amortize with the month following the month such stock was placed in service or with the succeeding taxable year.

The election must be made not later than the time for filing the income tax return (including extensions) for the taxable year in which the deduction is claimed. The election is made by filing a statement with the return identifying the election, the period for which it applies, and the rolling stock to which it applies.

The election may be revoked by the taxpayer at any time by notifying the commissioner in writing beforehand that he intends to discontinue the amortization deduction at the beginning of a specific month. Once an election has been revoked, it may not be reinstated with respect to the rolling stock to which it applied.

Amortization of Railroad Grading and Tunnel Bores — § 185

Sec. 185(c)
Regs. sec. 1.185-3

Railroads may make a binding election to treat the term "qualified railroad grading and tunnel bores" as including pre-1969 railroad grading and tunnel bores and to amortize such "qualified railroad grading and tunnel bores" ratably

over 50 years in lieu of any depreciation or other amortization deduction. The 50-year period begins with the first taxable year for which the election is effective or the year following the year the property is placed in service.

The election must be made not later than the time for filing the income tax return (including extensions) for the taxable year in which the deduction is claimed. The election is made by filing a statement with the return identifying the election, the period for which it applies, and the facility to which it applies.

The election applies to all qualified railroad grading and tunnel bores and may not be revoked by the taxpayer without the consent of the commissioner. In the event any qualified railroad grading or tunnel bore is retired or abandoned while this election is in effect, no deduction shall be allowed for this reason, and the amortization deduction under this election shall continue with respect to such property unless the retirement or abandonment is due to a casualty.

§ 187 Coal Mine Safety Equipment: Amortization

Sec. 187(b)
Regs. sec. 1.187-1

Taxpayers may elect to amortize certified coal mine safety equipment over a 60-month period in lieu of claiming depreciation. Under the 60-month rule, the taxpayer may elect to begin to amortize with the month following the month the equipment was placed in service or with the succeeding taxable year.

The election must be made not later than the time for filing the income tax return (including extensions) for the taxable year in which the deduction is claimed. The election is made by filing a statement with the return identifying the election, the period for which is applies, and the equipment to which it applies [regs. sec. 1.187-1(b)].

The election may be revoked by the taxpayer at any time by notifying the commissioner in writing beforehand that

he intends to discontinue the amortization deduction at the beginning of a specified month. Once an election has been revoked, it may not be reinstated with respect to the equipment to which it applied [sec. 187 (c)].

Amortization of Certain Expenditures for Child-Care Facilities — § 188

Sec. 188(a)
Regs. sec. 1.188-1(b), (c)

Taxpayers may elect to amortize over a 60-month period expenses incurred to acquire, construct, reconstruct, or rehabilitate property used as a facility for on-the-job training of employees or as a child-care center primarily for children of the taxpayers' employees. The election to amortize is made in lieu of claiming depreciation and is a tax preference item to the extent it exceeds otherwise allowable depreciation [sec. 57(a)(10)]. The amortization is also subject to depreciation recapture.

The time and manner for making this election is found in regs. sec. 1.188-1(b). The election may be terminated in accordance with regs. sec. 1.188-1(c).

Expenditures to Remove Architectural and Transportation Barriers to the Handicapped and Elderly — § 190

Sec. 190
Temporary regs. sec. 7.190

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses (not to exceed $25,000 for any taxable year) that are paid or incurred by him during the taxable year as expenses that are not chargeable to a capital account. The expenditures so treated shall be allowed as a deduction.

The election is made by claiming the deduction as a separate item identified as such on the taxpayer's income tax return for the taxable year for which the election is to apply.

§ 191 Amortization of Certain Rehabilitation Expenditures for Certified Historic Structures

Sec. 191
Temporary regs. sec. 7.191-1
Proposed regs. sec. 1.191-3

A taxpayer at his election may amortize the rehabilitation expenditures of a certified historic structure based on a 60-month period. At any time after making the election, the taxpayer may discontinue the amortization deduction and claim a depreciation deduction in lieu thereof.

§ 213 Medical Expenses: Decedents

Sec. 213(d)
Regs. sec. 1.213-1(d)

A decedent's medical expenses paid within a one-year period after death may be deducted in the decedent's final individual return, rather than as a debt of the decedent.

The election is made by attaching a statement to the return, amended return, or claim for refund, in accordance with the requirements of regs. sec. 1.213-1(d)(2).

The election is irrevocable if a waiver to claim the deduction for estate tax purposes (sec. 2053) is filed with the decedent's income tax return. (See the election under sec. 2053(a).)

§ 217 Moving Expenses: Reimbursement and Deduction

Sec. 217
Regs. sec. 1.217-2(a)(2)
Form 3903

In general, moving expenses are deductible in the year paid or incurred. If a cash-basis taxpayer receives reimbursement for a moving expense in a tax year other than the year he pays such expense, he can elect to deduct the expense in the year the reimbursement is received provided that

1. The expense is paid in the taxable year immediately prior to the year of reimbursement, or

2. The expense is paid in the taxable year immediately following the year of reimbursement and is paid before the due date of the return for the taxable year in which the reimbursement is received. (See also the election under regs. sec. 1.217-2(d)(2).)

The election to deduct moving expenses in the year of reimbursement is made by claiming the deduction on the return for the taxable year in which the reimbursement is received. The election can also be made on an amended return or by a claim for refund within the statutory period for refunds. Form 3903 or a similar statement explaining the deduction should be attached to the return.

Moving Expenses: Timing of Deduction

Sec. 217(d)(2)
Regs. sec. 1.217-1(d)(2)
Form 3903

A taxpayer may elect to deduct moving expenses before the 39-week (78-week if self-employed) time test is satisfied rather than wait until all time requirements have been met.

The election is made by filing Form 3903 or a statement explaining the deduction with the return for the year in which the expense was paid or incurred within the time for filing (including extensions).

If after claiming the deduction the time tests cannot be met, then the taxpayer in the subsequent taxable year must (1) include in income an amount equal to the deduction taken or (2) file an amended return for the year in which the deduction was taken.

Dividends-Received Deduction: Affiliated Groups

§ 243

Sec. 243(b)
Regs. sec. 1.243-1, -4

Members of an affiliated group may elect to deduct 100 percent of qualifying dividends received.

The election is made by the group's common parent in a statement filed on or before the dates specified in regs.

sec. 1.243-4(c)(1)(i). The parent is required to file additional statements for any corporations that later become members. In addition, members other than wholly owned subsidiaries must execute consent statements in accordance with regs. sec. 1.243-4(c)(2). These statements should be attached to the election filed by the common parent. Both wholly owned subsidiaries and consenting members should indicate on their returns that they are parties to this election, in the manner prescribed by regs. sec. 1.243-4(c)(2)(iv).

The election is irrevocable for the year of election. For any year thereafter, however, the election can be terminated in accordance with regs. sec. 1.243-4(e)(2). The termination must be accomplished on or before the due date for filing the income tax return of the common parent (including extensions) for the year in question. (See regs. sec. 1.243-4(e)(3) for refusal to consent by a new member; also see the election under sec. 1564(b), regarding the phase-in of the 100 percent dividend-received deduction.)

§ 248 Organization Expenses: Treatment

Sec. 248
Regs. sec. 1.248

A corporation may elect to amortize organization expenses over a period of at least 60 months beginning with the month in which it begins business. If the election is *not* made, these expenses are *not* deductible until the corporation is dissolved.

The election is made by attaching a statement to a timely filed return (including extensions) for the taxable year in which business begins, as outlined in regs. sec. 1.248-1(c).

The election, once made, is irrevocable, and the period of amortization selected cannot be changed.

§ 263 Intangible Drilling Costs: Treatment

Sec. 263(c)
Regs. sec. 1.263(c)-1; 1.612-4

Taxpayers have the option to expense intangible drilling and development costs of oil and gas wells.

To make the election, the taxpayer should claim intangible drilling and development expenses as a deduction in the return for the first year in which these expenses are paid or incurred.

This election is binding for all subsequent years. (See the election under Sec. 612.)

Intangible Drilling Costs: Geothermal Wells

Sec. 263(c)

Beginning on or after October 1, 1978, taxpayers may elect to deduct the intangible drilling costs on geothermal properties that are located within the United States or its possessions.

If a taxpayer has properties containing geothermal deposits and other oil and gas properties, he must make separate elections for these properties. The election must be made according to regulations prescribed by the commissioner.

Repairs: Railroad Rolling Stock

Sec. 263(d)

A taxpayer may at his election treat expenditures in connection with the rehabilitation of a unit of railroad rolling stock, other than locomotives, used by a domestic common carrier as deductible repairs under sec. 162 or sec. 212. During any 12-month period, such expenditures may not exceed 20 percent of the basis of such unit in the hands of the taxpayer. This election may not be made in the same year in which an election under sec. 263(e) is in effect.

Repairs Allowance

Sec. 263(e)

In accordance with the rules described in regs. sec. 167(a)-11(d)(2), a taxpayer may make an election under which amounts representing repair, rehabilitation, or im-

provement expenditures for any class of depreciable property are allowable as a deduction to the extent of the repair allowance for that class. To the extent that such expenditures exceed the repair allowances, the amounts are chargeable to a capital account.

§ 266 Taxes and Carrying Charges on Property: Treatment

Sec. 266
Regs. sec. 1.266-1(c)

Taxpayers can elect to capitalize taxes and carrying charges on certain property, which would otherwise be deductible.

To make the election, the taxpayer should attach a statement filed with the original return, as outlined in regs. sec. 1.266-1(c)(3). In making the election the taxpayer should note the following: If expenditures of *different* types relating to the *same* project are incurred, the election to capitalize can apply to certain types of items and not others. If expenditures for several items of the *same* type are incurred with respect to a *single* project, the election to capitalize must apply to all items of that type; however, expenditures of the *same* type with respect to *other* projects need not be capitalized.

Elections to capitalize various types of taxes and carrying charges [regs. sec. 1.266(b)] will be effective for differing time periods as specified in regs. sec. 1.266-1(c)(2).

§ 274 Items Not Deductible: Foreign Conventions

Sec. 274(h)(1)(A)

An individual who attends more than two foreign conventions during the year may select which two are to be taken into account for purposes of the limitation on expenses in connection with foreign conventions.

Corporate Distributions and Adjustments

Stock Redemption: Termination of Interest § 302

Sec. 302(c)(2)
Regs. sec. 1.302-4

A redemption of stock would qualify as a complete termination of an interest and would be treated as an exchange of stock except when there is constructive ownership of stock under the family attribution rules of sec. 318(a)(1). These rules generally will not apply if the distributee files an agreement and meets certain tests.

The agreement called for in sec. 302(c)(2)(A)(iii) should be in the form of a separate statement (in duplicate) signed by the distributee and attached to his timely filed return for the year in which the distribution occurs. The agreement shall state that the distributee has not acquired any interest in the corporation since the distribution and that he agrees to notify the district director of any acquisition of an interest in the corporation within 30 days after such acquisition if the acquisition occurs within 10 years from the date of the distribution.

If a corporation redeems its stock and the provisions of sec. 302(b)(3) (relating to complete termination), sec. 302(c)(2) (relating to the agreement and other conditions), or one of the other redemptions treated as exchanges under sec. 302(a) are not met, then the redemption shall be treated as a distribution of property to which sec. 301

 applies. Sec. 301 treatment may result in ordinary dividend income.

§ 305 Stock and Stock Rights: Disproportionate Distributions

Sec. 305(b)(2)
Regs. sec. 1.305-3(d)

If a corporation has convertible stock or securities outstanding and distributes a stock dividend with respect to the stock into which the convertible stock or securities are convertible, such dividend will generally be treated as a distribution to which sec. 301 applies, unless the corporation elects to adjust the conversion ratio of the securities. By making this election, no increase in proportionate interest in the assets or earnings and profits of the corporation by reason of the stock dividend will be considered to have occurred.

The election to adjust the conversion ratio must be made by the earlier of the following:

1. Three years after the date of the stock dividend, or
2. The date as of which the aggregate stock dividends (for which adjustment of the conversion ratio has not previously been made) total at least 3 percent of the stock issued and outstanding on the date of the first such stock dividend.

To make the election, the distributing corporation must attach a statement to its income tax return for the taxable year of the distribution. The statement should indicate that the corporation elects to make an adjustment in the conversion ratio within the time prescribed. A copy of the corporate authority for such an adjustment procedure should also be attached.

§ 307 Distribution: Basis of Stock Rights Acquired

Sec. 307(b)
Regs. sec. 1.307-2

A shareholder may elect to allocate part of the basis of stock to stock rights received on the stock where such

rights have a fair market value of less than 15 percent of the fair market value of the old stock on the date of distribution. (In the absence of an election, no allocation of basis is made and the rights will have a zero basis.)

The election is made by attaching a statement to the shareholder's timely filed return for the year in which the rights are received. The stock and rights to which the election applies must be identified, and the shareholder must retain a copy of the election and of the tax return with which it was filed in order to substantiate the basis of stock acquired by exercise of the rights.

The election is applicable with respect to all the rights received in a particular distribution and is irrevocable with respect to the rights for which the election is made.

Liquidating Distribution: PHC — § 316

Sec. 316(b)(2)(B)
Regs. sec. 1.316-1(b)
Form 1099

A personal holding company that liquidates within a 24-month period may designate all or part of the liquidating distributions to noncorporate shareholders as a dividend to the extent of such shareholders' allocable shares of the undistributed personal holding company income for the year of distribution. The liquidating distribution will then qualify for the dividends-paid deduction.

The corporation may claim the dividends-paid deduction by including such amount as a dividend on Form 1099 and by furnishing a written statement to shareholders pursuant to regs. sec. 1.316-1(b)(5).

This election appears to be irrevocable.

One-Month Liquidation: Recognition of Gain — § 333

Sec. 333
Regs. sec. 1.333-1, -3
Form 964

A qualified shareholder of a domestic corporation may elect to be governed by the provisions of sec. 333. This section provides for the deferment, in whole or in part, of

§ 333 gain realized from property received as a result of a complete liquidation occurring within one calendar month.

The election is made by the shareholder on Form 964, which is to be filed (in duplicate) with the district director with whom the final income tax return of the corporation is to be filed. The election must be filed within 30 days after the adoption of the plan of liquidation. A copy of the election should also be attached to the shareholder's income tax return for the taxable year in which the transfer of all the property under the liquidation occurs.

The election may not be withdrawn or revoked. It is personal to the shareholder making it and does not follow the stock into the hands of a transferee.

§ 334 Liquidation: Basis of Property Received

Sec. 334(b)(2)
Regs. sec. 1.334-1

In the liquidation of an 80-percent-owned subsidiary, a qualifying parent may elect to acquire the subsidiary's assets, the basis of which is determined by reference to the cost of the subsidiary's stock to the parent.

The election to have sec. 334(b)(2) apply is made by adopting a plan to liquidate the subsidiary within two years after the date the stock ownership requirements are met. (See regs. sec. 1.334-1.)

The election is irrevocable.

§ 337 Twelve-Month Liquidation: Recognition of Gain or Loss

Sec. 337
Regs. sec. 1.337-1, -6
Form 966

No gain or loss is recognized to a corporation on the sale of its property (with certain exceptions) if all its assets, except those retained to meet claims, are distributed within 12 months of the adoption of a plan of liquidation.

The election is made by attaching to the return a state-

ment which includes a copy of the minutes of the stockholders' meeting at which the plan of liquidation was adopted, a copy of the plan, a list of assets sold and retained, and the date of final liquidation [regs. sec. 1.337-6]. Form 966 should be filed within 30 days of the adoption of a plan of liquidation.

This election is irrevocable unless the plan is abandoned. If a plan is abandoned, details should be supplied by filing a revised Form 966.

Collapsible Corporations: Sale of Stock — § 341

Sec. 341(f)
Proposed regs. sec. 1.341-7(b)

A collapsible corporation may consent to recognize gain on the disposition of certain property so that the stockholders of the corporation may treat gain on the sale of its stock as capital gain. The capital gain treatment is applicable only to sales of stock within six months after the date of filing the consent.

A statement indicating the corporation's consent to have sec. 341(f)(2) apply should be filed with the district director. (See Rev. Rul. 69-32.) The statement should include the name, address, and taxpayer account number of any corporation of which 5 percent or more is owned by the consenting corporation. Shareholders selling stock within six months after the consent is filed should attach a copy of the consent to their tax returns for the year in which the sale is made. Records must be maintained by the corporation to provide specific identification of "subsection (f) assets." (See Rev. Rul. 69-33 for the agreement to be filed by a transferee corporation as a result of a nontaxable exchange where the basis of the transferor's assets carries over to the transferee and gain is not normally recognized by the transferor.)

The corporation may file as many additional consents as it wishes. The consent may not be revoked by the corporation at any time after a shareholder sells stock while the consent is in effect.

§ 362 Contributions to Capital: Reduction in Basis of Assets

Sec. 362(c)(2)
Regs. sec. 1.362-2

A corporation may elect to treat contributions of capital received in cash from *nonshareholders* in excess of the cost of property acquired with these monies as a reduction in the basis of certain assets specified by the taxpayer. In the absence of specific identification of the assets whose basis is to be reduced, such reduction will apply to property in the order specified by regs. sec. 1.362-2(b).

To reduce basis in a manner other than that prescribed by regs. sec. 1.362-2(b), the taxpayer must obtain the consent of the commissioner. A request for variation from the general rule should be filed by the taxpayer with its return for the taxable year in which the transfer of the property has occurred.

§ 382 § 383 Net Operating Loss Carryovers

Sec. 382, 383

The 1976 Tax Reform Act imposed stricter requirements on net operating loss carryovers involving certain reorganizations or liquidations. Public Law 96-167 (12/29/79) further delayed the effective date of these requirements until January 1, 1982, for reorganization plans adopted on or after that date, and until June 30, 1982, for acquisitions that occur in taxable years beginning after that date.

A taxpayer may elect to have the provisions of the Tax Reform Act of 1976 apply to any reorganization or acquisition that occurs prior to the end of the taxpayer's first tax year beginning after June 30, 1978, if the transaction is pursuant to a contract that was entered into before September 27, 1978.

The election is made by filing a statement relating the details of the transaction with a timely filed tax return for the year in which the reorganization or acquisition occurred.

Deferred Compensation

Qualified Pension, Profit-Sharing, and Stock Bonus Plans

§ 401

Sec. 401(a)(11)(C) and (E)

If a retirement plan offers benefits in the form of a life annuity and at the annuity starting date a participant has been married at least one year, the plan must provide for the benefits to be paid in the form of a qualified joint and survivor annuity. The participant may, however, elect in writing before the annuity starting date not to take such joint and survivor annuity.

Receipt of Payments

Sec. 401(a)(14)

A retirement plan must begin to make payments to a participant in the plan not later than the sixtieth day after the latest of his reaching age 65, his tenth anniversary of the year he began participation in the plan, or his termination with the employer. The participant may elect, however, to receive his payments later than the dates designated by the plan.

§ 401 Qualified Cash or Deferred Profit-Sharing Plans: Qualification Requirements

Sec. 401(k)(1) and 402(a)(8)

The Revenue Act of 1978 permits an employer to establish a qualified cash or deferred profit-sharing plan without including in the employee's income the employer's contributions to an employee trust. The plan must be part of a profit-sharing or stock bonus plan and, among other things, must permit an employee to elect either to take the employer's contribution in cash or to have it deposited in an employee trust.

§ 402 Employees' Trust: Rollover of Lump-Sum Distribution

Sec. 402(a)(5)
Proposed regs. sec. 1.402(a)-3

An employee receiving a lump-sum distribution from a qualified trust may roll the distribution over and avoid immediate taxation.

To qualify, an employee must transfer the same property (other than money) received, to the extent it exceeds the amount considered contributed by him, to an individual retirement account, an individual retirement annuity (other than an endowment contract), a retirement bond, or another qualified employees' trust or annuity plan. The transfer must occur on or before the sixtieth day after the day on which he received the distribution.

Employees' Trust: Lump-Sum Treatment

Sec. 402(e)
Proposed regs. sec. 1.402(e)-2
Temporary regs. sec. 11.402(e)(4)(B)-1
Form 4972

An employee (including a self-employed person) may elect a special method of computing tax on a lump-sum distribution from a qualified plan. The method allows

capital gain treatment for that part of a distribution attributable to pre-1974 service and tax at ordinary rates subject to a 10-year forward-averaging convention for post-1973 service.

In order to qualify for such treatment, the distribution of the balance in an employee's account must be made within one taxable year

1. Because of the employee's death,
2. After the employee attains age 59½,
3. Because of separation from service (does not apply to self-employed persons), or
4. After the employee has become disabled.

In addition, the employee must have participated in the plan for at least five taxable years before the year of distribution.

An employee (not a self-employed person) can elect capital gain treatment for pre-1973 amounts and not elect the 10-year averaging method.

The 10-year averaging method is available only if the recipient elects to treat all lump-sum distributions received during the year as one lump-sum distribution. This second election can be made only once after reaching age 59½.

The election for lump-sum treatment may be made by an employee's beneficiary, including an estate or trust, as well as the employee.

The election for lump-sum treatment is made by filing Form 4972 with the taxpayer's return for the year. The election may be made or revoked by filing an amended return within the statute-of-limitations period provided in sec. 6511.

Employees' Trust: Lump-Sum Treatment—Pre-1974 Participation Treated as Post-1973

Sec. 402(e)(4)(L)

A taxpayer/employee may elect to treat his pre-1974 participation as post-1973 participation for lump-sum distributions made after 1975 in taxable years beginning after

§ 402 1975. The effect of the election is to eliminate capital gains subject to minimum tax.

The election is not available if capital gain treatment was used for any lump-sum distributions received in a previous taxable year of the employee beginning after 1975.

Once made, the election is irrevocable and applies to all lump-sum distributions received by the taxpayer with respect to that employer.

§ 403 Employee Annuities: Special Computation of Annuity Exclusion Allowance for Employees of Educational Institutions, Hospitals, and Home Health Service Agencies

Sec. 403(b)

(See election under sec. 415(c)(4).)

§ 404 Employees' Trust: Deduction Limits of Certain Collectively Bargained Pension Plans

Sec. 404(a)(1)(B), (C)

Generally, deductions for contributions to pension plans are limited to those contributions required by the minimum funding rules when a plan is subject to the full funding limitation. However, when a plan becomes fully funded because plan liabilities are decreased by amendments negotiated through the collective bargaining process, maximum deduction limits may be elected by either using the full funding limitation for the year but increasing the amounts under sec. 404(a)(1)(A) by the decrease in the present value of all unamortized liabilities from the amendment or normal cost under the plan less 10-year amortization of the excess funding.

Similar treatment is available for certain public utilities doing business in 40 states providing regulated communications services where excess funding occurs because of an increase in benefits under Title II of the Social Security Act.

The election is available for plan years beginning after September 1, 1977.

Profit-Sharing Plans: Affiliated Group

Sec. 404(a)(3)(B)
Regs. sec. 1.404(a)-10

A member of an affiliated group of corporations may elect to make a contribution for another member to a profit-sharing or stock bonus plan under certain circumstances. Participating members with current or accumulated profits can make contributions for another participating member who lacks sufficient earnings and profits to make its own contribution. The group, however, must be qualified to file a consolidated return.

The election is made by deducting the proper amount on the appropriate return. The apportionment of payments among contributing members is dependent on whether or not a consolidated return is filed. (See regs. sec. 1.404(a)-10(c).)

The election is irrevocable.

Payment to Pension Plans, Etc.: Date of Deduction

Sec. 404(a)(6)
Rev. Ruls. 76-28 and 76-77

Deductions under sec. 404(a) are generally allowable only for the year in which the contribution is paid. However, in the case of either a cash- or accrual-basis taxpayer, payments made by the due date of the return (including extensions) may be treated as made during the preceding taxable year if (*a*) the payment is treated by the plan in the same manner as if it were made on the last day of the preceding taxable year and (*b*) either the employer designates in writing to the plan administrator that the payment is for the preceding year or the employer treats the payment as a deduction on its tax return for the preceding taxable year.

§ 404 The election applies to self-employed (HR-10) plans as well as to corporate plans.

§ 409 Retirement Bonds: Rollover to an IRA, Annuity, or Qualified Plan

Sec. 409(b)(3)(C)
Proposed regs. sec. 1.409-1(c)

The proceeds of the redemption by the registered owner of a retirement bond are subject to rollover, and immediate taxation of the redemption proceeds may be avoided.

To qualify, the redemption must occur before the close of the taxable year in which the taxpayer attains the age of 70½, and the proceeds must be transferred to an individual retirement account, an individual retirement annuity, or a qualified employees' trust or annuity plan.

The transfer must be made on or before the sixtieth day after the day on which the taxpayer received the proceeds of the redemption.

The proceeds may be transferred to a qualified employees' trust or annuity plan only if the bond was purchased with a rollover contribution from such a trust or plan.

§ 410 Employees' Trust: Churches May Have ERISA Rules Apply

Sec. 410(d)
Temporary regs. sec. 11.410-1 through -5

A church or convention or association of churches maintaining a church plan is generally exempt from various participation, vesting, and other requirements of the Employee Retirement Income Security Act of 1974 (ERISA). By election, certain provisions of ERISA will apply to such plans as if they were not church plans. The provisions are the following:

1. Sec. 410	Minimum participation standards
2. Sec. 411	Minimum vesting standards
3. Sec. 412	Minimum funding standards
4. Sec. 4975	Prohibited transactions

5. Sec. 401(a)(ii) (12), (13), (14), (15), and (19)	Joint and survivor annuities, mergers and consolidations, assignment or alienation of benefits, time of benefit commencement, certain social security increases, withdrawals of employee contributions

The election is available commencing with the first year the plan is covered under ERISA.

The election is made either by attaching to the annual return required under sec. 6058(a) or to an amended return a statement making the election, which indicates the first year for which it is to be effective, or by a written request for a determination letter for qualification under Sec. 401(a), 403(a), or 405(a). An election can be conditioned upon the issuance of a favorable determination letter.

Once made, the election is irrevocable.

Vesting Standards: Preamendment Vesting Schedule Regulations — § 411

Sec. 411(a)-8(b)

Section 411(a) defines the minimum vesting standards acceptable under the law for employee retirement plans, including plans in existence before the enactment of the law. If a plan amendment is adopted changing any vesting schedule of a preexisting plan, an employee with not less than five years of service must be permitted to elect to have his nonforfeitable percentage computed under the plan without regard to the new amendment. The election period under the plan must begin no later than the date the amendment is adopted and end no earlier than the latest of 60 days after adoption of the amendment, 60 days after the amendment's effective date, or 60 days after the participant is issued written notice of the plan amendment.

The plan may make the election irrevocable by the participant.

§ 412 Employees' Trust: Minimum Funding Standards—Valuation of Bonds

Sec. 412(c)(2)(B)
Temporary regs. sec. 11.412(c)-11

Generally, a pension plan's assets are valued at fair market values. A plan administrator may elect to value a bond or other evidence of indebtedness on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date.

To qualify, the bond must not be in default with regard to principal or interest.

As long as the election is in effect, the value of the bond is determined on the amortized basis.

The election is made by attaching a statement to that effect as part of the plan's annual return and including all such items not in default and any such items subsequently acquired. Items in default are valued at fair market value for as long as default exists.

The election may be revoked only with consent of the commissioner.

Employees' Trust: Minimum Funding Standards—Retroactive Plan Amendment

Sec. 412(c)(8)
Temporary regs. sec. 11.412(c)-7

A plan administrator may elect to have a plan amendment that was adopted no later than two and one-half months after a plan's year-end (two years in the case of a multi-employer plan) treated as if it were made on the first day of the plan's year.

The amendment may not reduce any participant's accrued benefit determined as of the beginning of the year, and it may not reduce such accrued benefit as of the adoption date of the amendment, unless notice was filed with the secretary of labor, who approved the amendment or failed to disapprove it within 90 days of the filing of notice.

The election is made by attaching a statement to the return, required under sec. 6058, for the related year. If

the return has been filed before the election, a statement containing information required by the regulation should be attached to a copy of the return, and the copy refiled within the time for filing the return under sec. 6058 or within 24 months from such date for multi-employer plans.

Employees' Trust: Alternative Medium Funding Standard

Sec. 412(g)

Generally, a defined benefit pension plan is required to be funded to meet normal costs plus amortized past service costs, increased liabilities, and experience losses, less experience gains and amortized liability decreases.

A plan whose funding method provides contributions no less than those under the entry-age-normal method may elect to use the alternative minimum funding standard. Under this method, the minimum contribution is normal cost plus the excess of accrued benefits over the value of plan assets. Plan assets are valued annually at fair market value, and plan liabilities are valued as if the Pension Benefit Guaranty Corporation were valuing a terminated plan.

Electing plans must maintain both an alternate funding account and the basic funding standard account.

Employee Annuities: Special Limitations on Contributions to Annuity Plans for Employees of Educational Institutions, Hospitals, and Home Health Service Agencies — § 415

Sec. 415
Temporary regs. sec. 11.415(c)(4)-1

An employee can elect to have the sec. 403(b) exclusion allowance computed under the sec. 415 rules for an annuity purchased by an educational institution, hospital, or home health service agency.

Section 415 provides three alternatives:

1. The "(A) election limitation" computes the exclusion allowance under sec. 403(b)(2)(A) for the year in which

a separation from service occurs, taking into account years of service, not to exceed a maximum of 10. The alternative is available only for years in which separation of service occurred and is limited to $25,000, as adjusted under sec. 415(d)(1)(B).

2. The "(B) election limitation" computes the exclusion allowance for the year as the smallest of
   a. $4,000 plus 25 percent of the individual's compensation for the year,
   b. The section 403(b)(2)(A) exclusion allowance for the year, or
   c. $15,000.
3. The "(C) election limitation" computes the exclusion allowance under the sec. 415(c)(1)(A) rules, which provide the $25,000 (as adjusted) and 25 percent limits.

The election is available for limitation years ending in taxable years beginning in 1976 and is made by attaching to the individual's return a statement of intention to make an election (described in temporary regs. sec. 11.415(c)(4)-1(a)(3)) and a statement that the election is made. The election must include the taxpayer's name, address, and social security number, and, once made, it is irrevocable.

Accounting Periods and Methods of Accounting

Accounting Period: Adoption of Taxable Year § 441

Sec. 441
Regs. sec. 1.441-1(b)

A new taxpayer may adopt any taxable year that meets the requirements of sec. 441. The first taxable year must be adopted before the time for filing the return (not including extensions) for that year. (For special rules applicable to partnership years, see sec. 706.)

After a taxpayer has adopted a taxable year, he must use it in computing his taxable income for all subsequent years unless approval to make a change is obtained from the commissioner or unless a change is otherwise permitted under the code or regulations.

Accounting Period: 52-53-Week Year

Sec. 441(f)
Regs. sec. 1.441-2(c)(1)

A new taxpayer may adopt a 52-53-week taxable year if it keeps its books and computes its income on that basis. An established taxpayer may change to a 52-53-week taxable year without permission if its year still ends within the same calendar month in which it formerly ended; otherwise the permission of the commissioner is required.

§ 441 (For special rules applicable to partnership years, see sec. 706.)

The election is made by closing the books on a proper basis and filing a statement with the first return, in accordance with regs. sec. 1.441-2(c)(3).

After a taxpayer has adopted a taxable year, it must use it for all subsequent years unless approval to make a change is obtained from the commissioner or unless a change is otherwise permitted under the code or regulations.

§ 442 Change of Accounting Period: Newly Formed Partnership

Sec. 442
Regs. secs. 1.442-1(b)(2); 1.706-1(b)

A newly formed partnership may adopt a taxable year that is the same as the taxable year of all its principal partners. If all its principal partners are not on the same taxable year, a newly formed partnership may adopt a calendar year. If the partnership wishes to adopt a taxable year that does not so qualify, it must obtain the permission of the commissioner.

In selecting its taxable year, the partnership should file with its first return either a copy of the letter from the commissioner approving the year adopted or a statement indicating that the partnership has adopted a taxable year that does not require prior approval. (See regs. sec. 1.706-1(b)(5).)

Change of Accounting Period: Existing Partnerships

Sec. 442
Regs. sec. 1.442-1(b)(2); 1.706-1(b)
Form 1128

An existing partnership may change its taxable year without the approval of the commissioner if all its principal partners have the same taxable year to which the partner-

ship changes or if all its principal partners who do not have such a taxable year concurrently change to such taxable year. In all other cases, an existing partnership may not change its taxable year without the approval of the commissioner.

An application for change of taxable year should be filed on Form 1128 on or before the fifteenth day of the second month following the close of the short period for which a return is required to change the taxable year. Short-period returns should be filed in accordance with sec. 443.

Change of Accounting Period: Corporations

Sec. 442
Regs. sec. 1.442-1(c)

Certain corporations may change their annual accounting period without the approval of the commissioner if they meet the requirements of regs. sec. 1.442-1(c)(2).

The election is made by filing a statement with the district director within the time for filing the required short-period return (including extensions). The statement should indicate that the corporation is changing its accounting period and that the conditions specified in the regulations have been met.

Change of Accounting Period: Newly Married Individuals

Sec. 442
Regs. sec. 1.442-1(e)

A newly married individual may change his or her annual accounting period so that a joint return may be filed in the future.

The election is made by filing a timely short-period return in accordance with sec. 443. The individual should attach a statement indicating that the return is filed under authority of regs. sec. 1.442-1(e).

§ 442 Change of Accounting Period: Certain Individuals

Sec. 442
Form 1128

Certain individuals whose income is derived from specified sources (Rev. Proc. 66-50) may change their accounting period from a fiscal to a calendar year without the permission of the commissioner.

The election is made by filing Form 1128 by the January 31 following the close of the short period for which a return is required to effect the change of accounting period. A copy of the form should also be attached to the short-period return.

§ 443 Short-Period Returns: Computation of Taxable Income

Sec. 443(b)
Regs. sec. 1.443-1(b)(2)(v)(a)

In connection with a short-period return arising from a change of accounting period, a taxpayer may elect to compute his taxable income under the optional method pursuant to sec. 443(b)(2). This method may be used in place of the general method prescribed in sec. 443(b)(1).

The election is generally made by filing a claim for refund not later than the due date (including extensions) of the taxpayer's return for the first taxable year that ends on or after the day which is 12 months after the first day of the short period. (However, if at the time the return for the short period is filed the taxpayer is able to determine that the 12-month period ending with the close of the short period will be used in computing the tax under sec. 443(b)(2), see regs. sec. 1.443(b)(2)(v)(b).)

§ 446 Accounting Methods: Adoption or Change

Sec. 446
Regs. sec. 1.446-1(e)
Form 3115

A taxpayer filing his first return may adopt any permissible accounting method in computing his income. Adop-

tion of a method is accomplished through its use in the return of the first year. Furthermore, a taxpayer may adopt any permissible method in connection with each separate and distinct trade or business.

A change of accounting method always requires the permission of the commissioner. Applications for change (Form 3115) should be filed within 180 days after the beginning of the taxable year for which the change is desired. (See Rev. Proc. 70-27 for further extension of the time for applying.)

Note: While a change of accounting method always requires the commissioner's consent, there are several changes that will be given automatic approval:

- Change from the charge-off to the reserve method for bad debts [Rev. Procs. 64-51 and 70-15].
- Certain changes in the depreciation method [Rev. Proc. 74-11].

Inventory of Growing Crops — § 447

Sec. 447

For taxable years beginning after December 31, 1977, the Revenue Act of 1978 permits farmers, nurserymen, and florists to utilize the accrual method of accounting without inventorying the value of growing crops, plants, or trees.

In addition, for taxable years beginning after December 31, 1977, and before January 1, 1981, a farmer, nurseryman, or florist may change to the cash method of accounting without the commissioner's approval.

Accounting Methods: Long-Term Contracts — § 451

Sec. 451
Regs. sec. 1.451-3, -5

In connection with accounting for long-term contracts, a taxpayer may elect to use either the percentage-of-completion method or the completed-contract method.

The taxpayer makes the election by indicating his choice of method in a statement attached to his income tax return.

 (See regs. sec. 1.451-5 concerning the conformity of financial and tax reporting in certain situations.)

A change to or from a long-term method requires the consent of the commissioner [regs. sec. 1.451-3(c)].

Accounting Methods: Advance Payments for Goods, Long-Term Contracts, and Future Services

Sec. 451
Regs. sec. 1.451-5

Advance payments may generally be included in income in the taxable year of receipt or in the taxable year properly accruable under the taxpayer's method of accounting if that method is also used by the taxpayer for financial reporting purposes. (For exceptions to the general rule, see regs. sec. 1.451-5(c).)

Where the taxpayer elects to include advance payments under the accrual method, he must attach an information schedule to his return reflecting the information required by regs. sec. 1.451-5(d).

Any change to or from the method a taxpayer originally adopts for reporting advance payments will be considered a change of accounting method under sec. 446, requiring the commissioner's approval.

Crop Insurance Proceeds or Disaster Payments: Year of Inclusion

Sec. 451(d)
Regs. sec. 1.451-6

A cash-basis taxpayer may elect to report the proceeds of insurance received as a result of damage or destruction to crops in the year following their damage or destruction. The taxpayer may make this election if he can establish that under his practice the income from such crops would have been reported in any following taxable year. However, no election is required if the proceeds are actually received in such following year.

The election is made by attaching a signed statement to

the return of the taxable year in which the damage or destruction occurred. The statement should contain a declaration that the election is being made in accordance with sec. 451(d) and should name the specific crops involved in the election. The statement should also declare that the income from such crops would have been reported in a later year. Finally, the cause and date of the destruction or damage should be given, as well as a list of the insurance carriers from whom insurance was received, the dates of receipt of payment, and the specific crops to which the payments applied.

Once made, the election is binding for the taxable year for which it is made unless a consent to a revocation is obtained from the district director. Requests for revocation should be made in accordance with regs. sec. 1.451-6(b)(2).

Proceeds of Livestock Sold Because of Drought

Sec. 451(e)
Regs. sec. 1.451-7

Farmers using the cash method of accounting may elect to include the income from sale of livestock sold because of drought in the year following the sale. To qualify, the farmer must establish that the sale occurred because of drought that resulted in the designation of his area as eligible for federal assistance. Only livestock sold in excess of that usually sold will qualify.

The election is made by attaching to the return or amended return for the taxable year a statement setting forth the name and address of the taxpayer and the following information regarding each classification of livestock:

1. A declaration that an election under sec. 451 is being made.
2. Evidence of drought conditions and the date, if known, of designation as a federal assistance area.
3. An explanation of the relationship of the drought area to the early sale.
4. The total number of animals sold in each of the three preceding years.

5. The number of animals that would have been sold under normal business conditions.
6. The total number of animals sold, and the number sold because of drought, during the taxable year.
7. A computation of the income deferred for each classification.

Once made, an election is irrevocable without the commissioner's approval.

§ 453 Installment Method: Dealers in Personal Property

Sec. 453
Regs. sec. 1.453-1, -7, -8

A dealer in personal property may elect to adopt, or change to, the installment method of accounting.

Election of the installment method in the first year in which installment sales are made requires only an indication in a timely filed return (including extensions) that the method is being used. A change to the installment method requires that a statement be attached to the return containing the information called for by regs. sec. 1.453-8(a)(3).

Under sec. 453(c)(4), taxpayers who are dealers in personal property may revoke a previously made installment election for any year ending on or after December 30, 1969, and for any year ending before such date if the three-year statutory period under sec. 6501 has not expired on December 30, 1969. The revocation can be made in the form of an amended return for each year in which the installment election was in effect. The revocation must be made within three years from the due date of the return (including extensions) and should indicate that the taxpayer is revoking an installment election.

Installment Method: Realty and Other Sales

Sec. 453
Regs. sec. 1.453-1(c), -8(b)

Income from the sale of realty and from casual sales of personal property may be reported on the installment

method. This election is subject to certain payment and property-type limitations. Separate elections and computations are required for each sale or disposition.

To make the election, the taxpayer should show the computation of gross profit on the sale in his return for the year of the sale. In any taxable year in which payments attributable to the sale are received, the taxpayer must show the computation of income being reported for that year. (See Rev. Rul. 65-297 regarding additional time for making the election.)

Generally, the election is binding with respect to each transaction to which it applies.

Obligations Issued at a Discount: Treatment § 454

Sec. 454
Regs. sec. 1.454-1

A cash-basis taxpayer may elect to accrue income on non-interest-bearing obligations issued at a discount. (For corporate obligations issued at a discount after May 27, 1969, see sec. 1232(a)(3).)

The election is made by treating the annual increment in redemption value as current income in a timely filed return for the year. If the election is made, it applies to all other similar obligations owned by the taxpayer at the beginning of the first taxable year to which the election applies and to all those thereafter acquired by the taxpayer.

Any revocation of this election is considered a change in accounting method and requires the permission of the commissioner.

Prepaid Income: Subscriptions § 455

Sec. 455
Regs. sec. 1.455-6(a), (b)

A taxpayer may elect to include prepaid subscription income in gross income over the period of time during which the liability to furnish a publication exists.

Election without consent. Consent of the commissioner is not required if the election is made for the first taxable

 year in which prepaid subscription income is received. The election should be made in a statement attached to the return for that first taxable year. It should include all the information called for in regs. sec. 1.455-6(a)(2). The election must be made within the time for filing the income tax return (including extensions) for the first year.

Election with consent. If a taxpayer wishes to make an election under this section at any time after the first taxable year in which prepaid subscription income is received, the consent of the commissioner must be obtained. Requests for consent must be filed with the commissioner within 90 days after the beginning of the first taxable year to which the election is to apply. (See regs. sec. 1.455-6(b).)

To revoke the election, the taxpayer must file an application for change, in accordance with sec. 446(e).

§ 456 Prepaid Income: Dues

Sec. 456
Regs. sec. 1.456-6

Certain qualified organizations may elect to report prepaid dues income ratably over the period during which the liability to render services exists, provided that the period does not extend beyond 36 months.

Election without consent. Consent of the commissioner is not required if the election is made for the first taxable year in which prepaid dues income is received. The election should be made in a statement attached to the return for that first taxable year. It should include all the information called for in regs. sec. 1.456-6(a). The election must be made within the time for filing (including extensions) the income tax return for that first year.

Election with consent. If a taxpayer wishes to make an election under this section at any time after the first taxable year in which prepaid dues income is received, consent of the commissioner must be obtained. Requests for consent must be filed with the commissioner within 90 days after

the beginning of the taxable year to which the election is to apply. (See regs. sec. 1.456-6(b).)

To revoke the election, the taxpayer must file an application for change in accordance with sec. 446(e).

Deferred Compensation Plans for State and Local Governments: Deferral Agreement § 457

Sec. 457

The Revenue Act of 1978 permits a state or local government or a tax exempt rural electric cooperative to establish a deferred compensation plan that will enable a participant in the plan to exclude from income any compensation deferred under the plan until the year in which the compensation is paid or made available to the participant.

The maximum amount that a participant may defer is $7,500 or 33⅓ percent of includible compensation per year. The law also provides a catch-up provision for participants who did not utilize their full exclusion for one or more of the last three taxable years.

To make a plan eligible, the taxpayer must meet several requirements, one of which is a provision for a deferral agreement in which the individual must elect to participate. In the case of new plans or of new participants in an existing plan, the election must be effective for pay periods beginning after the participation agreement is filed with the plan sponsor or administrator.

Returned Magazines, Paperbacks, and Records § 458

Sec. 458

A publisher or distributor of magazines, paperback books, or records may exclude from income certain amounts attributable to the return of qualified merchandise within a specified period after the end of the taxable year in which the items were sold. The return period is two months and 15 days for magazines and four months and 15 days for

§ 458 paperbacks or records. A taxpayer may select a shorter period but must then use it consistently.

"Qualified merchandise" refers to merchandise for which the taxpayer has a legal obligation to adjust the sale price of any unsold items.

The election is effective for taxable years beginning after September 30, 1979, for those taxpayers on the accrual basis of accounting. The election may be made without the commissioner's consent but may not be revoked without the secretary's consent.

§ 461 Real Property Taxes: Year of Deduction

Sec. 461(c)
Regs. sec. 1.461-1(c)

A taxpayer on the accrual method may elect to accrue real property taxes ratably over the period of time to which those taxes are applicable.

The election may or may not require the commissioner's consent, depending upon the time the election is made.

Election without consent. To elect without consent, the election must be made for the first taxable year in which the taxpayer incurs real property taxes. The election must be made not later than the time prescribed for filing the return for that year (including extensions). The taxpayer should attach a statement to his return setting forth (1) the activity to which the tax applies, (2) the accounting method used, (3) the period of time involved, and (4) the computation of first-year tax.

Election with consent. If the taxpayer wishes to make this election after the first taxable year in which he has incurred real property taxes, consent of the commissioner must be obtained. Request for consent must be filed with the commissioner within 90 days after the beginning of the taxable year to which the election is to apply. The request should contain the same information called for above.

To revoke the election, the taxpayer must file an application for change in accordance with sec. 446(e).

Accounting for Discount Coupons § 466

Sec. 466

Beginning in 1979, certain issuers of qualified discount coupons may elect to deduct the cost of redeeming coupons that are outstanding at the end of the year if the coupons are redeemed within six months after the end of the year. A "qualified discount coupon" is defined as a coupon issued to a purchaser that permits the purchaser to obtain a discount on the purchase price of the merchandise or other tangible personal property.

The election is available only to taxpayers who are on the accrual method of accounting. Because the election constitutes a change in accounting method, the taxpayer must make a special transitional adjustment.

Inventory Valuation: Methods § 471

Sec. 471
Regs. sec. 1.471-2 through -8

A taxpayer may adopt either (1) cost or (2) cost or market, whichever is lower, as a basis for valuing inventory. Additional alternatives are available to securities dealers, farmers, and retail merchants. Cost for inventory purposes may be determined under any one of several assumptions regarding the goods on hand, such as specific identification, FIFO, or LIFO. (See sec. 472 if the taxpayer wishes to adopt LIFO.)

No formal requirements need to be met to elect a method. However, accounting for inventory must conform to the best accounting practice in the particular trade or business, and it should clearly reflect income.

Revocation requires an application for change of method in accordance with sec. 446(e).

Inventory Valuation: Farmers

Sec. 471
Regs. sec. 1.471-6

Farmers on the accrual basis may elect to use the farm-price method and/or the unit-livestock-price method instead of conventional methods for valuing inventories.

A change to or from the farm-price method requires an application for change, as noted in sec. 446(e). But a change from cost or cost or market to the unit-livestock-price method requires no formal application.

§ 472 Inventory Valuation: LIFO

Sec. 472
Regs. sec. 1.472-1
Form 970

A taxpayer may elect to compute all or part of his inventory under the last-in, first-out method.

Adoption of or change to LIFO is signified by filing in triplicate a completed Form 970 with the tax return for the year of election. The commissioner's consent to this method is deferred until examination of the taxpayer's return.

Revocation requires an application for change of method in accordance with sec. 446(e).

Inventory Valuation: Dollar-Value LIFO

Sec. 472
Regs. sec. 1.472-3

Any taxpayer may elect to determine the cost of his LIFO inventories under the so-called "dollar-value" LIFO method.

Permission of the commissioner is not necessary if the LIFO method is being adopted for the first time or if the taxpayer is merely changing to the dollar-value method while continuing to use the same pools as were used under another LIFO method. The commissioner's consent to this method is deferred until examination of the taxpayer's return. A taxpayer using another LIFO method of pricing inventories, however, may not change to the dollar-value method without the commissioner's consent.

Revocation requires an application for change of method, as noted in sec. 446(e).

Exempt Organizations

Requirements for Exemption § 503

Sec. 503(c)
Regs. sec. 1.503(d)-1

An organization described in sec. 501(c)(17) or (18) or sec. 503(a)(1)(B) that is denied exemption under sec. 501(a), because it engaged in prohibited transactions, may file a claim for exemption for any taxable year subsequent to the taxable year in which notice of denial of exemption was received.

The claim should be filed in accordance with applicable regulations.

If the commissioner is satisfied that such organization will not knowingly again engage in a prohibited transaction, the organization will be exempt for all subsequent years.

Private Foundations: Termination of Status § 507

Sec. 507(b)(1)(A)
Regs. sec. 1.507-2(a)

Private foundation status may be terminated by a complete distribution in lieu of paying the termination tax.

An organization may terminate its status as a private foundation at any time by complete distribution of all its assets to certain public charities described in sec. 170(b)(1)(A).

§ 507 Private Foundations: Operation as Public Charity

Sec. 507(b)(1)(B)
Regs. sec. 1.507-2(b)

Private foundations may terminate their private foundation status through operation as a public charity in lieu of paying the termination tax.

Where a private foundation wishes to become a public charity it must

1. Operate as a public charity within 12 months after the beginning of its first taxable year after 1969 or for 60 continuous months beginning with any taxable year after 1969.
2. Notify the district director before the beginning of the 12-month or 60-month period (or within 90 days after the date on which the applicable regulations become final) of its intention to terminate its private foundation status.
3. Satisfy the district director immediately after expiration of the 12- or 60-month period that it has become a public charity.

§ 508 Certain Exempt Organizations: Presumption of Status

Sec. 508(b)
Regs. sec. 1.508-1(b)(1), (2)
Forms 1023, 4653

Sec. 501(c)(3) organizations that are not enumerated in sec. 508(c) and reg. sec. 1.508-1(b)(7) are presumed to be private foundations.

Such organizations may avoid presumption of private foundation status by giving notice that they are not private foundations.

Notice must be given within 15 months from the end of the month in which the organization is organized. If an exemption ruling or determination letter is dated before July 13, 1970, the organization should file Form 4653 with the Philadelphia service center. Otherwise, the organization should file with the district director Form 1023,

accompanied by a statement that the organization is not a private foundation.

Private Foundations: Noncompliance With Governing Instruments

Sec. 508(e)(2)(B)

A private foundation organized before 1970 may prevent its governing instrument requirements from applying to post-1971 periods.

To accomplish this, the foundation must commence a judicial proceeding before January 1, 1972, to reform its governing instrument and so forth or to excuse compliance therewith.

Unrelated Business Income: Treatment of Title-Holding Company Income — § 511

Sec. 511(c)
Regs. sec. 1.511-2(c)(1)

If an exempt title-holding company (described in sec. 501(c)(2)) pays an amount of its net income for a taxable year to an organization exempt from taxation under sec. 501(a) (or would pay such an amount except that its expenses exceed its income), and if both entities file a consolidated return for such year, then the title-holding company is treated, for purposes of the unrelated business income tax, as being organized and operated for the same purposes as the other exempt organization. In addition, the title-holding company will also be treated as being organized and operated for its title-holding purpose. (See also sec. 1504(e) and regs. sec. 1.1502-100.)

Unrelated Business Income: Allocation of Mechanical and Distribution Costs of Periodicals — § 512

Secs. 512(a)(1), 513(c)
Regs. sec. 1.512(a)-1(f)(6)(ii)(c)

For purposes of determining its unrelated business taxable income from the sale of advertising in its periodicals,

an exempt organization may elect to keep its records in a manner that accurately reflects the allocation of mechanical and distribution costs of its publications. The record-keeping manner selected will be left to the exempt organization where there is no factor in the character of the periodical to indicate that such an allocation would be unreasonable.

Unless this election to keep accurate records of the allocation of mechanical and distribution costs is made, the portion of these costs that is includible in determining direct advertising costs will be determined on the basis of the ratio of advertising lineage to total lineage of the periodical and the application of that ratio to the total mechanical and distribution costs of the periodical.

Unrelated Business Income: Consolidation of Multiple Periodicals

Secs. 512(a)(1), 513(c)
Regs. sec. 1.512(a)-1(f)(7)(i)

In determining the amount of unrelated business taxable income derived from the sale of advertising, an exempt organization publishing two or more periodicals for the production of income may treat the gross income from all (but not less than all) such periodicals and the items of deduction directly connected with such periodicals (including readership costs) on a consolidated basis as if such periodicals were one periodical. (Readership costs are defined in regs. sec. 1.512(a)-1(f)(6)(iii).)

Such treatment must, however, be followed consistently. Any revocation of this election is considered a change of accounting method and requires the permission of the commissioner.

Unrelated Business Income: Exempt Function Income of Title-Holding Company

Sec. 512(a)(3)(C)
Proposed regs. sec. 1.512(a)-3(d)(1)

An exempt title-holding company (described in sec. 501(c)(2)) whose income is payable to an exempt social club or employees' association may be treated as having

exempt function income if it files a consolidated return with the payee organization. By filing a consolidated return, unrelated business taxable income, including exempt function income, will be computed on a consolidated basis.

Note: Regardless of whether a consolidated return is filed, a title-holding company whose income is payable to a social club or employees' association will be subject to the unrelated business income tax as though it were a social club or an employees' association.

Unrelated Business Income: Sale of Exempt Function Property—Nonrecognition of Gain

Sec. 512(a)(3)(D)
Proposed regs. sec. 1.512(a)-3(e)(7)

A social club or employees' association can defer any gain on the sale of property which was used directly in its exempt function if such organization replaces such property with other property to be used in performance of the exempt function. Gain from such sale will be recognized only to the extent that the sales price of the old property exceeds the cost of acquiring the new property. The new property need not be similar in nature or use to the old property. To take advantage of this deferral procedure, the exempt organization must have replaced the property within a period beginning one year before the date of such sale and ending three years after such date.

Whenever an exempt social club or employees' association makes a sale of property and does not recognize gain thereon pursuant to sec. 512(a)(3)(D), the statutory period prescribed in sec. 6501(a) for the assessment of the deficiency attributable to any part of such gain shall not expire until three years after the commissioner is provided notification of the sale. Specifically, the notice should include—

1. The organization's cost of the new property exceeded the cost of the old property, resulting in the nonrecognition of any part of any gain, or
2. The organization subsequently decided not to purchase

other property within the period when such a reinvestment would result in nonrecognition of gain, or

3. The organization failed to make a purchase within the required period.

If (1) applies and some part of the gain will be reacquired because the sales price of the old property exceeds the cost of the new, or if (2) or (3) applies, the notification should be accompanied by an amended return for the year in which the gain from the sale of the old property was realized in order to recognize such gain in that year.

Unrelated Business Income: Timing to Set Aside Income

Sec. 512(a)(3)(A), (B)
Proposed regs. sec. 1.512(a)-3(c)(3)(vii)
Form 990-T

In the case of a social club or employees' association, set-aside income refers to the net income that is set aside for certain religious, charitable, or scientific purposes. (See proposed regs. sec. 1.512(a)-3(c)(3)(iii).) Such income will generally be excluded from gross income only if it is set aside in the taxable year in which it is includible in gross income. However, income set aside on or before the date prescribed for filing the exempt organization business income tax return (Form 990-T) for the taxable year (including extensions) may, at the election of the taxpayer, be treated as having been set aside in such taxable year but only to the extent attributable to amounts that would have been includible in gross income for such year.

§ 514 Unrelated Debt-Financed Income: Indeterminate Acquisition Price

Sec. 514(a)(1)
Regs. sec. 1.514(a)-1(a)(4)(i)

In computing the income to be taken into account with respect to debt-financed property for purposes of the unrelated business income tax, an exempt organization that acquires (or improves) property for an indeterminate price

may elect to determine the initial acquisition indebtedness and the unadjusted basis of the property by using a method other than those prescribed by regs. sec. 1.514(a)-1(a)(4)(ii) and (iii).

To make the election, the consent of the commissioner is required.

Unrelated Debt-Financed Income: "Neighborhood Land Rule"

Sec. 514(b)(3)(A)
Regs. sec. 1.514(b)-1(d)(1)(iii)

The "neighborhood land rule" (described in regs. sec. 1.514(b)-1(d)(1)(iii)) states that if an exempt organization other than a church acquires certain real property, the principal purpose of which is to use the land in performance of its exempt purpose, such property will not be treated as debt-financed property if used for the exempt purpose commencing within 10 years of the time of its acquisition. However, after the first 5 years of the 10-year period, the neighborhood land rule will apply *only if* the exempt organization can establish to the satisfaction of the commissioner that future use of the acquired land in furtherance of the organization's exempt purpose before the expiration of the 10-year period is reasonably certain.

In order to satisfy the commissioner, the organization must have at least a definite plan detailing a specific improvement and a completion date and some affirmative action toward the fulfillment of such a plan. The information should be forwarded to the commissioner for a ruling at least 90 days before the end of the fifth year after acquisition of the land.

"Neighborhood Land Rule": Claim for Refund

Sec. 514(b)(3)(D)
Regs. sec. 1.514(b)-1(d)(4)

If an exempt organization other than a church has not satisfied the actual use condition of the "neighborhood land rule" before the date for filing the return (including

extensions) for the taxable year, the tax for such year should be computed without regard to the application of such actual use condition. Nevertheless, an exempt organization may file a claim for refund for any overpayment of tax that later results from satisfaction of the actual use conditions within the required time period. This is so even though such refund would otherwise be prevented by operation of law.

A refund may be allowed if the claim is filed within one year after the close of the taxable year in which such actual use condition is satisfied. Interest on any overpayment for a taxable year resulting from the satisfaction of this actual use condition is allowed only at the rate of 4 percent instead of the usual 6 percent per annum.

Unrelated Debt-Financed Income: Church Property

Sec. 514(b)(3)(E)
Regs. sec. 1.514(b)-1(e)(1) and (2)

If a church or association or convention of churches acquires real property for the principal purpose of using the land within 15 years from the time of its acquisition in order to fulfill the church's exempt purpose, the property will not be treated as debt-financed property as long as the organization does not abandon its intent to use the land in such a manner within the 15-year period.

This treatment does not apply to any property after the expiration of the 15-year period. Furthermore, after the first 5 years of the 15-year period this treatment will continue to apply *only if* the church or association or convention of churches establishes to the satisfaction of the commissioner that use of the acquired land in furtherance of the organization's exempt purpose before the expiration of the 15-year period is reasonably certain.

In order to satisfy the commissioner, the organization must have at least a definite plan detailing a specific improvement and a completion date and some affirmative action toward the fulfillment of such a plan. The information should be forwarded to the commissioner for a ruling at least 90 days before the end of the fifth year after acquisition of the land.

Corporations Used to Avoid Income Tax on Shareholders

Accumulation of Earnings: Burden of Proof § 534

Sec. 534(c)
Regs. sec. 1.534-2

In a Tax Court proceeding involving an alleged unreasonable accumulation of earnings and profits by a corporation, the corporation may elect to place part of the burden of proving such allegation upon the government. (The burden, which is initially upon the government, shifts to the corporation upon advance government notification that a notice of deficiency will include an accumulated earnings tax.)

The election is made by filing a statement (within 60 days of the notification's mailing) with the internal revenue office that issued the notification, stating the grounds (with supporting facts) upon which the corporation relies to establish that there has been no accumulation of earnings and profits beyond the reasonable needs of the business. An additional 30-day extension may be granted in certain cases. (See regs. sec. 1.534-2(d)(2).)

The election permanently shifts the burden of proof to the commissioner regarding the grounds set forth in the corporation's statement, provided the grounds cited are relevant and the facts are sufficient to show the basis thereof.

§ 545 Undistributed PHC Income: Adjustments

Sec. 545(b)(1)
Regs. sec. 1.545-2
Schedule PH, Form 1120

In computing undistributed personal holding company (PHC) income, a corporation may elect to deduct certain federal and foreign income and excess profits taxes accrued for the year. The election applies to a personal holding company that deducted such taxes for this purpose on a cash-paid basis under the 1939 code, and that, in the absence of the election, continues on the cash basis.

The corporation makes the election by deducting accrued taxes on Schedule PH, Form 1120, filed with the return. The schedule should include a statement that the corporation has made this election, giving the year to which the election was first applicable.

The election is irrevocable for the taxable year to which the election applies and for all subsequent taxable years.

Undistributed PHC Income: Adjustments for Certain Liens

Sec. 545(b)(9)
Regs. sec. 1.545-2(i)(5)

A shareholder of a personal holding company may elect special "income averaging" to compute his income tax regarding certain dividends as if such dividends had been received ratably over the period to which the adjustment related. The election pertains to those dividends that are attributable to a sec. 545(b)(9) income-increasing adjustment.

The election applies where U.S. liens against corporations which decreased undistributed personal holding company income during the period of their existence are satisfied or released, thus causing the restoration of the prior income-decreasing adjustments.

The shareholder makes the election by attaching a statement to his return for the year for which such dividends would be reported but for the election. The statement should indicate the amount of each year's deduction arising

out of the existence of such liens and the amount added to income upon their satisfaction or release. (See regs. sec. 1.545-2(i)(5)(iii).)

Undistributed PHC Income: "Would-Have-Been Companies"

Sec. 545(c)
Regs. sec. 1.545-3(e)
Schedule PH, Form 1120

A corporation may elect not to deduct amounts used or irrevocably set aside to pay or retire qualified indebtedness in the determination of undistributed personal holding company income. The election applies to a "would-have-been" personal holding company, that is, a corporation that was not subject to personal holding company treatment for years beginning prior to February 26, 1964, but would have been so subject if the amended personal holding company requirements applicable to years beginning after December 31, 1963, had been in effect for the earlier years.

The taxpayer makes the election by filing a statement on or before the fifteenth day of the third month following the close of the taxable year for which the election is made, designating the amounts that are to be treated as nondeductible and the related indebtedness. (See regs. sec. 1.545-3(e)(2).) Such information is to be included with Schedule PH, Form 1120. Even though an extension of time is granted for filing the return, the statement must be filed within the time specified above.

The election applies only to the specific year for which it was made and is irrevocable for that year.

PHC: Deficiency Dividend § 547

Sec. 547
Regs. sec. 1.547-2
Form 976

A corporation may elect to establish a deficiency-dividend deduction in determining the amount of personal holding company tax after a deficiency if such tax has been

§ 547 determined by a final court decision, closing agreement, or specific agreement.

The corporation can make the election by paying a deficiency dividend and filing a claim for deduction. The deficiency dividend must be paid within 90 days after the determination of liability. The claim should be filed in duplicate on Form 976 within 120 days after the determination of liability, but not prior to paying the dividend. (See regs. sec. 1.547-2(b)(2).) *Note:* A claim on Form 843 will also be required if any part of the deficiency has been paid.

The deficiency-dividend deduction is irrevocable and is applicable only to the year to which the final determination relates.

§ 556 PHC: Foreign Income

Sec. 556(b)(1)
Regs. sec. 1.556-2(a)(2)
Form 958

To compute undistributed foreign personal holding company income, a corporation may elect to deduct federal income and excess profits taxes accrued for the year. The election applies to a foreign personal holding company which deducted such taxes on a cash-paid basis under the 1939 code and which, in the absence of such election, continues on such basis.

The corporation makes the election by deducting accrued taxes on Form 958 filed for the year of change, and including a statement that the corporation has made the election, setting forth the year to which the election was first applicable.

This election is irrevocable for the taxable year to which it applies and for all subsequent taxable years.

§ 563 PHC: Dividends Paid After Close of Year

Sec. 563(b)
Regs. sec. 1.563-2
Schedule PH, Form 1120

A personal holding company may elect to treat dividends paid during the first two-and-one-half months of a year as

having been paid in the prior year for purposes of determining the dividends-paid deduction.

To make the election, the corporation should include such dividends in computing its dividends-paid deduction on Schedule PH, Form 1120, filed with the return. The amount of dividends that may be included in computing the dividends-paid deduction for the taxable year may not exceed 20 percent of the dividends paid during the taxable year.

The election is effective only for the specific dividends designated.

PHC: Consent Dividends — § 565

Sec. 565
Regs. sec. 1.565-1
Forms 972, 973

A shareholder may elect to treat as a dividend (and an immediate contribution to capital) the amount specified in a consent. This will establish a dividends-paid deduction in the same amount for purposes of computing the personal holding company tax and the accumulated earnings tax.

Shareholders make the election by signing Form 972, which specifies the amount each shareholder agrees to include in his income for his taxable year, that is, the year that includes or coincides with the corporate year-end. The Form 972, together with Form 973 prepared by the corporation to reflect information about its outstanding stock and related matters, is to be filed with the corporate return not later than the due date thereof. *Note:* Any withholding of tax that would have been required by sec. 1441 or 1442 upon a payment in money, concerning nonresident aliens or foreign corporation shareholders, must accompany the return.

The election is irrevocable within the limitations of the consents. The consent is effective only for those amounts and the year specified in Form 972.

Banking Institutions

Banks: Reserve for Losses on Loans § 585

Sec. 585(b)

Banks may base their addition to reserves for losses on loans under sec. 166(c) on either the percentage method or the experience method. The percentage method is subject to certain limitations stated in sec. 585(b)(2)(B) and can be used only for years beginning before 1988.

The election is made annually by attaching a statement to the return showing how the bad debt reserve was computed.

SBICs and Business Development Corporations: Reserve for Losses § 586

Sec. 586(b)(1), (2)

Companies in business at least 10 years. These companies may compute their addition to a bad debts reserve by using a six-year moving average based upon their own experience, or by using the lower of either the balance of the reserve at the close of the base year or a ratio of base year loans outstanding to base year reserves applied to current loans outstanding. *Note*: The term "base year" in this section means the year beginning before July 12, 1969.

Companies in business less than 10 years. Newer companies will be allowed to use the method above or a ratio based upon an industry-wide moving average for the

 current year and the preceding five taxable years, whichever method produces the larger deduction.

The election is made annually by attaching a statement showing how the bad debt reserves were computed.

§ 593 Mutual Savings Banks, Etc.: Bad Debts

Sec. 593
Regs. secs. 1.593-1; 1.166-1

Mutual savings banks may elect alternate methods of treating bad debts. The alternatives are (1) to deduct actual bad debts to the extent that they become worthless during the year [sec. 166(a)] or (2) to deduct as bad debts those amounts credited to a reserve for bad debts [regs. sec. 1.593-1 and -2]. The election may be made by a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank.

The selection of either method may be made by the taxpayer in the return for its first taxable year. The method selected is subject to the approval of the commissioner upon examination of the return. If the method is approved, it must be used in returns for subsequent years.

Application for permission to change a method of treating bad debts should be made at least 30 days prior to the close of the taxable year for which the change is to be effective.

Mutual Savings Banks: Treatment of Reserves

Sec. 593
Regs. sec. 1.593-7(c)(2)

A mutual savings bank, a domestic savings and loan association, or a cooperative bank may elect to charge bad debts on nonqualifying loans and on qualifying real property loans against the respective reserve for losses on such loans. Or, it may charge such bad debts with respect to either class of loans in whole or in part against the supplemental reserve for losses on loans established as of December 31, 1962.

The election is made by charging such losses to the reserves in the return.

The taxpayer is not bound by the election.

Savings Banks: Reserve for Losses on Loans

Sec. 593(b)

A mutual savings bank, a domestic savings and loan association, or a cooperative bank will generally be permitted to compute its bad debt reserve on qualifying real property loans by the percentage-of-taxable-income method, the percentage method as explained in sec. 585(b)(2), or the experience method as explained in sec. 585(b)(3).

The election is made annually by attaching a statement to the return showing how the reserve was computed. (See sec. 596 for certain limitations on the dividends-received deduction that result when reserves are computed under the taxable-income method described in sec. 593(b)(2).)

Foreclosed Property: Minor Capital Improvements

Sec. 595
Regs. sec. 1.595-1(e)(4)

Certain creditors described in sec. 593(a) may elect to treat minor capital improvements to property acquired in a foreclosure in the same manner that the "acquired property" is treated under sec. 595 or as a capital improvement. A capital improvement is considered "minor" only if its cost does not exceed $3,000. Under sec. 595, the excess of the adjusted basis of acquired property over its fair market value is treated as a worthless debt under the provisions of sec. 166. The basis of the acquired property is reduced by the amount treated as a worthless debt.

The election is made with the return by treating minor capital improvements to acquired property in accordance with one of the above methods. The taxpayer must keep

§ 595 records to reflect, for each of the acquired properties involved, the cost of each capital improvement made. There can be different elections for different acquired properties.

The treatment accorded minor capital improvements must be consistently applied to all such improvements made to a particular property.

Natural Resources

Mineral Property: Advanced Royalties § 612

Sec. 612
Regs. sec. 1.612-3(b)(3)

A taxpayer may elect to treat advanced royalties paid or accrued in connection with mineral property (1) as deductions from gross income for the year the advanced royalties are paid or accrued or (2) as deductions from gross income for the year the mineral product with respect to which the advanced royalties were paid is sold.

The taxpayer must elect the treatment of all such advanced royalties in his return for the first taxable year in which such amounts are paid or accrued. The manner in which such items are treated in the return will constitute the taxpayer's election. A failure to deduct these items for the year paid or accrued will constitute an election to deduct advanced royalties when the mineral product is sold.

The election is binding for the taxable year for which made and for all subsequent taxable years.

Development Costs: Delay Rentals

Sec. 612
Regs. sec. 1.612-3(c)(1)

Delay rentals paid for the privilege of deferring the development of property may be deducted as an expense or charged to a depletable capital account. (See sec. 266 and regs. sec. 1.266-1(c)(3).)

The election to capitalize is exercised by filing with the

return a statement indicating the item or items that the taxpayer elects to treat as chargeable to a capital account [regs. sec. 1.266-1(c)(3)].

The election is effective only for the year for which it is made, and the election to capitalize delay rentals may be made with respect to a particular property even though such an election is not exercised in that year with respect to other such property. (See regs. sec. 1.266-1(c)(2)(i) and Rev. Rul. 55-118.)

Intangible Drilling Costs: Capitalize or Expense

Secs. 612, 263(c)
Regs. sec. 1.612-4(a), (d), (e)

All intangible drilling and development costs incurred in the drilling of both productive and nonproductive wells and the preparation of wells for the production of oil and gas may, at the taxpayer's option, be charged either to a capital account or to current expense.

The option to charge these costs to expense may be exercised by claiming intangible drilling and development costs as a deduction on the return for the first taxable year in which the taxpayer pays or incurs such cost. No formal statement is necessary. If the taxpayer fails to deduct these costs as expenses in the return, the taxpayer will be deemed to have elected to recover such costs through depletion to the extent that they are not represented by physical property, and through depreciation to the extent that they are represented by physical property.

The election is binding for the first taxable year for which it is effective and for all subsequent taxable years. (See the election under sec. 263(c).)

Intangible Drilling Costs: Nonproductive Wells

Sec. 612
Regs. sec. 1.612-4(b)(4)

If an operator has elected to capitalize intangible drilling and development costs pursuant to sec. 263(c), then an additional option is accorded with respect to intangible

drilling and development costs incurred in drilling a nonproductive well. Such costs may be deducted by the taxpayer as an ordinary loss, provided an election is made in the return for the first taxable year in which a nonproductive well is completed.

The taxpayer should make a clear statement of election in the return for the first taxable year in which the nonproductive well is completed. Failure to make the election shall be deemed to be an election to recover such costs through depletion to the extent that they are not represented by physical property, and through depreciation to the extent they are represented by physical property.

This election is binding for the first taxable year for which it is effective and for all subsequent years.

Transportation Expense: Treatment as Mining Expense — § 613

Sec. 613(c)(2)
Regs. sec. 1.613-3(h)

A taxpayer may make an application to include in the computation of its gross income from mining the cost of transportation in excess of 50 miles from the point of extraction of the minerals from the ground.

The taxpayer shall file an original and one copy of the application with the commissioner. The application must include a statement giving in detail the facts concerning the physical and other requirements that prevented the construction and operation of the plant at a place nearer the point of extraction from the ground.

The regulations are silent on the manner of termination; however, any change in the facts represented in the original application necessitates that a new application be filed with the commissioner.

Percentage Depletion: Daily Depletable Natural Gas Quantity

Sec. 613A(c)(4)
Regs. sec. 1.613A-5

To be entitled to percentage depletion on certain natural gas production, a qualified taxpayer must elect to allocate

a portion of daily depletable oil quantity to natural gas production in the ratio of 6,000 cubic feet of natural gas to one barrel of oil.

The election applies only to independent producers and royalty owners, as defined, and does not apply to "fixed contract" or "regulated" natural gas as defined in sec. 613A(b)(2), which is subject to the rules of sec. 613.

The election is made by filing a statement with the service center where the taxpayer files his return for the year in question. The statement must specify the number of barrels of the taxpayer's depletable oil quantity that the taxpayer elects to treat as depletable natural gas quantity for the year. The election may be made or changed on an amended return.

§ 614 Operating Mineral Interests: Treatment as Separate Properties

Sec. 614(b)(2)
Regs. sec. 1.614-8

If a taxpayer has more than one operating mineral interest in oil and gas wells in one tract or parcel of land, he may elect to treat one or more of such interests as separate properties. If no election is made, all the taxpayer's operating mineral interests in a separate tract or parcel of land will be combined and treated as one property.

The election must be made in the first year in which the taxpayer makes any expenditure for development or operation of such operating mineral interest. The election is required to be in the form of a specific statement attached to the income tax return for the year in which it is made. The statement must identify by name, code number, or other means the tract or parcel of land and operating mineral interests within the same tract or parcel of land that the taxpayer is electing to treat as separate properties.

The election is binding upon the taxpayer for all subsequent years. However, an election to treat one or more operating mineral interests as separate properties does not prevent making a later election to combine a newly discovered or newly acquired operating mineral interest with

one of such interests if no other combination exists in the tract or parcel of land on the date when the later election would become effective.

Operating Mineral Interests: Aggregation of Separate Properties

Sec. 614(c)(1)
Regs. sec. 1.614-3

Except in the case of oil and gas wells, a taxpayer who owns two or more separate operating mineral interests that constitute part or all of the same operating unit may elect to form an aggregation of all such operating mineral interests that compose any one mine or any two or more mines. It is not necessary that the separate operating mineral interests be included in a single tract or parcel of land or in contiguous tracts or parcels of land as long as such interests constitute part or all of the same operating unit. More than one aggregation may be formed within one operating unit. If no election is made with respect to a particular operating mineral interest, such interest shall be treated as a separate property.

The election must be made not later than the time prescribed for filing the return (including extensions) for the first year the taxpayer makes any expenditures for development or operation of the separate operating mineral interests. The election must be in the form of a specific statement containing the information outlined in regs. sec. 1.614-3(f)(5).

The election is binding on the taxpayer for the year made and for all subsequent years unless consent to change is obtained from the commissioner.

Single Operating Mineral Interest: Division into Separate Interests

Sec. 614(c)(2)
Regs. sec. 1.614-3

Except in the case of oil and gas wells, a taxpayer who owns a separate operating mineral interest in a mineral deposit in a single tract or parcel of land may elect to treat

such interest as two or more separate operating mineral interests if such mineral deposit is being developed or extracted by means of two or more mines. The election may not be made with respect to an aggregated property or with respect to any operating mineral interest which is a part of any aggregation formed by the taxpayer unless the commissioner consents.

The election must be made not later than the time prescribed for filing the return (including extensions) for the first year the taxpayer makes any expenditures for development or operation of more than one mine with respect to the separate operating mineral interest. The election must be in the form of a specific statement containing the information outlined in regs. sec. 1.614-3(f)(5).

The election is binding on the taxpayer for the year made and for all subsequent years unless consent to change is obtained from the commissioner. However, any separate operating mineral interest formed by making the election may be included as a part of an aggregation, providing the time for making the election to aggregate has not expired.

Nonoperating Mineral Interests: Aggregation

Sec. 614(e)
Regs. sec. 1.614-5(d)

A taxpayer who owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land may be permitted to form an aggregation of these interests and to treat them as one property.

To make this election it is necessary to apply for the permission of the commissioner. Permission will be granted only if it is established that tax avoidance is not a principal purpose in forming the aggregation. The application should be filed within 90 days after the beginning of the first taxable year for which aggregation is desired or within 90 days after the acquisition of one of the nonoperating mineral interests which is to be included in the aggregation, whichever is later. The application should

include a statement of details as set forth in regs. sec. 1.614-5(e)(4).

The election to aggregate is binding for the year of election and for all subsequent years unless a consent to change is obtained. (See regs. sec. 1.614-5(e) and (f).) Consent to a different treatment will not be granted where the principal purpose for the change is tax consequences.

Development Expenses: Deferment § 616

Sec. 616(b)
Regs. sec. 1.616-2

An election may be made to defer development expenditures (*other than on oil and gas wells*) on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold.

The election shall be made for each mine or other natural deposit by a clear indication on the return or by a statement filed not later than the time prescribed for filing the return (including extensions) for the taxable year to which the election is applicable.

The election to defer development expenditures applies only to expenditures for the taxable year for which made. However, once made, the election is binding with respect to the expenditures for that taxable year.

Mining Exploration Expenditures: Deduction and Recapture § 617

Sec. 617(a)(1)
Regs. sec. 1.617-1(c)

Certain mining exploration expenditures (with the exception of oil and gas or any mineral for which a deduction for percentage depletion is not allowable) paid or incurred during the taxable year before the beginning of the development stage of the mine may be allowed as a deduction in computing taxable income. The election applies only with respect to expenditures that would not otherwise be

allowable as a deduction for the taxable year. In the case of minerals located outside the United States, certain limitations under sec. 617(h) are applicable. Amounts deducted under this election are subject to recapture under sec. 617(b), (c), and (d).

The election should be made within the period prescribed for making a claim for credit or refund. The taxpayer makes the election by indicating clearly on his return the amount of the deduction claimed for each property or mine. The election is applicable to all such exploration expenditures paid or incurred during that taxable year and all subsequent years, unless revoked.

The election may not be revoked without the secretary's consent.

Adjusted Exploration Expenses: Recapture

Sec. 617(b)
Regs. sec. 1.617-3(b)

For all mines for which deductions have been allowed under sec. 617(a) and that reach the producing stage during a taxable year, the taxpayer can include in gross income an amount equal to his adjusted exploration expenditures (defined in sec. 617(f)(1)) and treat the expenditures as chargeable to capital account. If the taxpayer does not make this election then, no deduction for depletion under sec. 611 with respect to the property will be allowed until the amount of depletion otherwise allowable equals the amount of the adjusted exploration expenditures with respect to the mine.

The manner in which the taxpayer treats the adjusted exploration expenditures in his return will constitute his election. The election may be made, or changed by filing an amended return, not later than the time prescribed for filing the return (including extensions). In each subsequent year, a new election is made for any other mines reaching the producing stage in that year.

The election cannot be changed later than the return filing due date (including extensions).

Adjusted Exploration Expenses: Recapture on Disposition of Portion of Property

Sec. 617(d)(2)
Regs. sec. 1.617-4(b)(3)

Under sec. 617(d), gain from the disposition of mining property is treated as ordinary income to the extent it is attributable to deductions allowed for exploration expenditures under sec. 617(a). If only a portion of mining property is sold, all exploration expenditures with respect to the property are treated as attributable to the property sold unless an undivided interest is sold, in which case a proportionate part of the exploration expenditures is treated as attributable to the undivided interest.

This general rule will not apply if the taxpayer establishes to the satisfaction of the commissioner that such expenditures relate neither to the portion (or interest therein) disposed of nor to any mine in the property held by the taxpayer before the disposition which has reached the producing stage. The taxpayer may establish these facts by filing a statement with the commissioner setting forth the information required by regs. sec. 1.617-4(b)(3). The time for filing this statement is not specified by the regulations.

If the statement is not filed with the commissioner, the district director is authorized to make the same determination upon his own initiation.

Timber Cutting: Treatment as Sale — § 631

Sec. 631(a)
Regs. sec. 1.631-1

A taxpayer may treat timber cutting as a sale or exchange. The election will apply to all timber that the taxpayer has owned or has had a contract right to cut for a period of more than six months (nine months for taxable years beginning in 1977 and twelve months after 1977).

The election must be made by the taxpayer in his income tax return for the taxable year for which the election is applicable; it cannot be made in an amended return for

that year. The election in the return should take the form of a computation under the provisions of sec. 631(a) and sec. 1231.

This is a permanent election and is binding for all subsequent years unless the commissioner, upon showing of undue hardship by the taxpayer, consents to revocation.

Timber Disposal: Payment Deemed Disposal

Sec. 631(b)
Regs. sec. 1.631-2(b), (c)

A taxpayer may elect to treat the date of payment as the date of timber disposal when payment is made before the date such timber is cut. If no election is made, the date of disposal is deemed to be the date the timber is cut. The election is effective only for the purposes of determining the holding period of the timber.

The election is made in a statement attached to the taxpayer's income tax return filed on or before the due date (including extensions) for the taxable year in which the payment is received. The statement should specify the advance payments which are subject to the election and should identify the contract under which the payments are made. A new election is required each year identifying the contracts under which such payments are being made.

§ 636 Mineral Production Payments: Treatment As Loans

Sec. 636(a)
Regs. sec. 1.636-4

A taxpayer may elect to treat all mineral production payments that the taxpayer carved out of mineral properties after the beginning of his last taxable year ending before August 7, 1969, as mortgage loans under sec. 636. In the absence of this election, the provisions of sec. 636 apply only to mineral production payments created on or after August 7, 1969, other than mineral production payments created before January 1, 1971, pursuant to a binding contract entered into before August 7, 1969.

The election under sec. 503(c)(2) of the Tax Reform Act of 1969 must have been made by May 30, 1973, by attaching a statement to the income tax return (or amended return) for the first taxable year in which the taxpayer created a production payment to which the election applies. A statement should also be attached to an amended return for each subsequent taxable year for which an income tax return has been filed prior to making the election if the tax liability for such year is affected by the election. The statement should include the information called for in regs. sec. 1.636-4(c)(2).

Once made, the election is irrevocable unless consent to revoke is granted by the commissioner. An application to revoke must be filed within the time specified for making the election.

Estates, Trusts, Beneficiaries, and Decedents

Charitable Contributions: Year of Deduction § 642

Sec. 642(c)(1)
Regs. sec. 1.642(c)-1

A trustee or administrator of an estate or trust may elect to treat a contribution paid in one taxable year as a deduction in the year prior to the year in which it was paid.

The election is made by attaching a statement to the return (or amended return) for the taxable year in which the contribution is treated as paid. The statement should contain the information specified in regs. sec. 1.642(c)-1(b)(3). The election must be made no later than the time prescribed for filing the return (including extensions) for the succeeding taxable year.

Generally, the election becomes irrevocable after the last day prescribed for making it.

Estates and Trusts: Treatment of Administration Expenses

Sec. 642(g)
Regs. sec. 1.642(g)-1

A fiduciary or other person may elect to claim an income tax deduction for all or part of administration expenses and casualty losses incurred in connection with the adminis-

tration of a decedent's estate [sec. 162 or 212], rather than as deductions for estate tax purposes [sec. 2053 or 2054].

To make the election, a statement should be filed in duplicate to the effect that the items claimed as deductions in computing taxable income have not been allowed as deductions from the gross estate and that all rights to deduct them as such are waived. The statement should be filed with the income tax return for the year of the deduction or with the office where the return was filed so that it may be associated with the return. The election may be made at any time before the expiration of the statutory period of limitation applicable to the year for which the deduction is sought, as long as it is made prior to the time the estate tax deduction is finally allowed.

The election is irrevocable. *Note:* The claiming of the items as deductions from the gross estate is not binding. A timely election will still be valid as long as the estate tax deduction has not been finally allowed.

§ 652 § 661 § 662 Estates and Trusts: Allocation of Deductions

Secs. 652(b), 661(b), 662(b)
Regs. secs. 1.652(b)-3, 1.661(b)-2, 1.662(c)-4, example (e)

Deductions not directly attributable to a specific class of income may be allocated to any item of income included in computing distributable net income. A portion, however, must be allocated to nontaxable income (except dividends excluded under sec. 116) pursuant to sec. 265 and the related regulations.

The election is made by allocating those deductions in whatever proportion the fiduciary elects.

The allocation proportions are determined annually by the fiduciary.

§ 663 Distributions by Trusts: Year of Credit

Sec. 663(b)
Regs. sec. 1.663(b)-1, -2

The fiduciary of a trust may elect to treat any distribution or a portion of any distribution made to a beneficiary within the first 65 days following the taxable year as an amount

paid or credited on the last day of such taxable year. However, in the case of distributions after May 8, 1972, the amount to which the election applies may not exceed

1. The income of the trust (as defined in regs. sec. 1.643(b)-1), or
2. The distributable net income of the trust for such taxable year, if greater, reduced by amounts paid, credited, or required to be distributed in such taxable year.

The election must be made annually in a statement attached to the return of the trust for the taxable year for which the election is made. It must be submitted within the time for filing the return (including extensions).

The election is revocable at any time prior to the last day prescribed for making the election. After that time, the election becomes irrevocable.

Charitable Remainder Trusts: Asset Valuation Dates — § 664

Sec. 664(a), (d)
Regs. sec. 1.664-3(a)(1)(iv)
Form 1041-B

In valuing the net assets of a charitable remainder unitrust, a choice of valuation dates is available for arriving at a basis for its annual distribution.

The net fair market value of the trust's assets may be determined on any one date during the taxable year or by taking the average of valuations made on more than one date during the taxable year of the trust, as long as the same valuation dates and methods are used each year.

The trustee should indicate his selection of the valuation date or dates on the first return (Form 1041-B) that the trust is required to file.

Partners and Partnerships

Partner's Share of Foreign Taxes: Treatment § 702

Sec. 702
Regs. sec. 1.702-1(a)(6)

A partner may elect to treat his distributive share of partnership foreign taxes paid or accrued either as a deduction under sec. 164 or as a credit under sec. 901.

The election is made by claiming either the deduction or the credit on the individual partner's return.

The election may be changed at any time before the expiration of the period prescribed by sec. 6511.

Partnerships: Elections in General § 703

Sec. 703(b)
Regs. sec. 1.703-1(b)(1)

Any election (other than the election regarding foreign taxes under sec. 901, the election relating to the deduction and recapture of certain mining exploration expenditures under sec. 617, the election relating to the definition of a net lease under sec. 57(c), and the election relating to limitation on interest on investment indebtedness under sec. 163(d)) affecting the computation of income derived from a partnership must be made by the partnership and not by the partners separately.

All partnership elections are applicable to all partners equally, but any election of the partnership does not apply to any partner's nonpartnership interests.

§ 704 Partner's Distributive Share: Effect of Partnership Agreement

Sec. 704(a), (b)
Regs. sec. 1.704-1(a), (b)

Partners may provide in the partnership agreement for the manner in which they will share each item or class of items of income, gain, loss, deduction, or credit of the partnership.

If the partnership agreement makes no specific provision for the manner of sharing one or more items or classes of items, a partner's distributive share will be determined in accordance with the provisions of the partnership agreement for the division of general profits and losses.

If the principal purpose of any provision in the partnership agreement determining a partner's distributive share of a particular item is to evade or avoid the federal income tax, the provision will be disregarded.

Partner's Distributive Share: Contributed Property

Sec. 704(c)
Regs. sec. 1.704-1(c)

If the partners so provide in the partnership agreement, depreciation, depletion, or gain or loss with respect to contributed property may be allocated among the partners in a manner which takes into account all or any portions of the difference between the adjusted basis and the fair market value of contributed property at the time of contribution. The allocation may apply to all contributed property or to specific items. If the partnership agreement is silent concerning income and deductions with respect to contributed property, such items will be treated in the same manner as though the property had been purchased by the partnership.

A special rule applies if all partners contribute undivided interests in the same property and their relative interests in the property before contribution are in the same ratio as their interests in the capital and profits of the partnership.

Under this circumstance, the partner's share of depreciation, depletion, or gain or loss with respect to the property will be determined as if the property had not been contributed to the partnership, unless the partnership agreement provides otherwise.

Partnerships: Adoption or Change in Taxable Year — § 706

Sec. 706
Regs. sec. 1.706(b)

(See the elections under sec. 442.)

Closing of Partnership Year: Sale, Exchange, or Liquidation of Partner's Interest

Sec. 706(c)(2)(A)
Regs. sec. 1.706-1(c)(2)(ii)

In the case of a sale, exchange, or liquidation of a partner's entire interest in a partnership, the terminating partner shall include in his taxable income his distributive share of the partnership income for the period ending with the date of such sale, exchange, or liquidation. In lieu of an interim closing of the partnership books, such partner's distributive share may, by agreement among the partners, be estimated by taking a pro rata part of the amount of the items he would have included in his taxable income had he remained a partner until the end of the partnership taxable year. The proration may be based on the portion of the taxable year that has elapsed prior to the sale, exchange, or liquidation, or may be determined under any other method that is reasonable.

Amortization of Partnership Organization Fees — § 709

Sec. 709(b)

Effective for taxable years after 1976, a partnership may elect to amortize amounts paid or incurred in organizing

 a partnership over a period of time of not less than 60 months.

§ 732 Transferee Partner: Basis of Partnership Property

Sec. 732(d)
Regs. sec. 1.732-1(d)

If a partner receives a distribution of property (other than money) from the partnership within two years after he acquired any part of his interest by a transfer with respect to which the election under sec. 754 was not in effect, he may elect to treat as the adjusted basis of the property the adjusted basis the property would have if the adjustment provided in sec. 743(b) were in effect.

The election should be made in the taxable year of the distribution from the partnership if the transfer includes property subject to allowance for depreciation, depletion, or amortization. If the distribution does not include property subject to depreciation, depletion, or amortization, then the election should be made for any taxable year no later than the first taxable year in which the basis of the distributed property is pertinent in determining the partner's income tax.

The election is made by submitting a schedule and written statement attached to the tax return for the year in which the election is applicable, in accordance with regs. sec. 1.732-1(d)(3).

The election is binding for the taxable year in which it is made and for all subsequent taxable years.

§ 734 Undistributed Partnership Property: Adjustment to Basis

Sec. 734
Regs. sec. 1.734-1

(See the election under sec. 754.)

Liquidation of a Partnership Interest: Payment for Goodwill

Sec. 736(b)(2)(B)
Regs. sec. 1.736-1(b)(3)

The character of amounts paid by a partnership to a retiring partner or to a successor in interest of a deceased partner in exchange for that partner's interest in partnership goodwill is governed by the partnership agreement. If such agreement provides for a reasonable payment for goodwill, the amounts are treated as payment for a partnership asset [sec. 736(b)], nondeductible to the partnership, and capital gain (to the extent basis is exceeded) to the retiring or deceased partner. However, if payments are made to cover goodwill without specific provision in the partnership agreement, the payments will be treated under sec. 736(a) as a deduction to the partnership and ordinary income to the retiring partner or the deceased partner's successor in interest.

Payments for Partnership Interest: Apportionment

Sec. 736
Regs. sec. 1.736-1(b)(5)(iii)

Retiring and remaining partners may agree on the apportionment of each annual payment between the payment of a distributive share [sec. 736(a)] and the payment in exchange for partnership property [sec. 736(b)], subject to certain limitations.

The election is made by an agreement regarding apportionment between the retiring and remaining partners.

Liquidation of Partner's Interest: Installment Reporting

Sec. 736
Regs. sec. 1.736-1(b)(6)

Upon complete liquidation of a partner's interest in partnership property [sec. 736(b)], a partner may elect to

report gain or loss ratably as payments are received. If no election is made, gain or loss is determined under sec. 731.

The partner must make the election in his return for the first taxable year for which he receives such payments. A statement must be attached to his return indicating the election and showing the computation of gain included in gross income.

§ 743 Transfer of Interest: Adjustment to Basis of Partnership Property

Sec. 743
Regs. sec. 1.743-1

(See the election under sec. 754.)

§ 754 Partnership Property: Adjustment of Basis

Sec. 754
Regs. sec. 1.754-1(b)

A partnership may elect to adjust the basis of partnership property under sec. 734(b) when it makes a distribution and under sec. 743(b) when a partnership interest is transferred. Such an election must apply to both secs. 734 and 743; it cannot be made with respect to one section and not the other. The election will apply to all property distributions and transfers of partnership interests within the partnership taxable year for which the election is made and to all subsequent taxable years.

The election is made in a statement filed with the partnership return for the first taxable year to which the election applies. For the election to be valid, the return must be filed not later than the time prescribed (including extensions) for filing the return for such taxable year. The statement should contain the information required by regs. sec. 1.754-1(b). Statements required by regs. secs. 1.734-1(d) and 1.743-1(b)(3) should also be filed by the partnership or partners when applicable.

The election may be revoked with permission of the district director. To obtain such permission, an application to revoke must be filed with the director no later than 30

days after the close of the partnership taxable year for which it is to be effective. The application should contain the reason for revocation. No application will be approved where the primary purpose of the revocation is to avoid stepping down the basis of partnership assets.

Partnership Property: Allocation of Sec. 754 Basis Adjustment — § 755

Sec. 755(a)(2)
Regs. sec. 1.755-1(a)(2)

A partnership (or a partner electing under sec. 732(d)) may, with permission of the district director, adjust the basis of assets under sec. 734(b) and 743(b) in a manner other than that prescribed by regs. sec. 1.755-1(a)(1). This regulation generally provides that if there is an increase in basis to be allocated, it can be allocated only to assets whose values exceeds basis, and if there is a decrease in basis to be allocated, it can be allocated only to assets whose basis exceeds their values.

Application for permission to use a different allocation method must be filed with the district director no later than 30 days after the close of the partnership taxable year in which the proposed adjustment is to be made. The application must describe the proposed adjustments and the reason their use is desired. The director may allow an increase in basis of some property and a decrease in basis of other property, but each increase or decrease must reduce the differences between basis and value, and a satisfactory showing of values must be submitted.

Partnerships: Exclusion from Subchapter K — § 761

Sec. 761(a)
Regs. sec. 1.761-1(a)(2)(iv)(a)
Regs. sec. 1.761-2(b)

Certain unincorporated organizations may elect to be excluded from all tax provisions applicable to partners and partnerships.

The election can be made for any taxable year in a written statement attached to a properly executed partner-

ship return for the year in which the election is applicable. (See regs. sec. 1.761-1(a)(2)(iv)(a) and regs. sec. 1.761-2(b)(2)(i).) The return should contain only the name or other identification and address of the organization.

The regulations indicate that the statement must be attached to a timely filed return, but that under certain circumstances the election will be deemed to have been made even though the required statement was not timely filed. (See regs. sec. 1.761-2(b)(ii).)

The election is irrevocable for the year for which made and all subsequent years as long as the organization remains qualified under regs. sec. 1.761(a)(2), unless approval for revocation is obtained. Application for permission to revoke the election must be submitted to the commissioner no later than 30 days after the beginning of the first taxable year to which the revocation is to apply.

Partnerships: Partial Exclusion from Subchapter K

Sec. 761
Regs. sec. 1.761-1(a)(2)(iv)(b)
Regs. sec. 1.761-2(c)

Certain unincorporated organizations may request to be excluded from certain provisions applicable to partners and partnerships.

A written request should be submitted to the commissioner no later than 90 days after the beginning of the first taxable year for which partial exclusion is desired. It should set forth the specific provisions from which the exclusion is sought and state that the organization qualifies for the exclusion.

The exclusion is effective only upon approval by the commissioner and is subject to his conditions.

Insurance Companies

Life Insurance Companies: Transfers of Surplus — § 815

Sec. 815(d)(1)
Regs. sec. 1.815-6(a)

A life insurance company may elect to subtract from its policyholders' surplus account any amount in such account as of the close of the taxable year and pay tax on the amount subtracted. The balance is then transferred to the shareholders' surplus account and is available for dividends.

The election may be made for any taxable year but not later than the time prescribed for filing the return (including extensions). The election is made in a statement attached to the life insurance company's tax return for any taxable year for which the company desires the election to apply. It should indicate that the election has been made under sec. 815(d)(1) for the taxable year and give the amount to be subtracted from the policyholders' surplus.

The election, once made, may not be revoked. However, the election applies only to the year for which made. A new election must be made for each taxable year for which the company desires the election.

Life Insurance Companies: Method of Accounting — § 818

Sec. 818(a)
Regs. sec. 1.818-2(a)

A life insurance company may elect a combination of an accrual method of accounting with any other special

method permitted by chapter 1 of the code except the cash method.

The method and scope of the election must be made in accordance with the specific statutory provisions of those sections containing such elections (that is, sec. 167, sec. 248, and so forth) and the regulations thereunder.

Termination of the election is also governed as above.

Life Insurance Companies: Computation of Reserves

Sec. 818(c)
Regs. sec. 1.818-4

A company that values reserves on the preliminary-term basis may elect to revalue on the net level premium basis, using either the exact or approximate method of revaluing reserves.

The election is made in a statement attached to the tax return for the year of election. The return and statement should be filed not later than the due date (including extensions). The statement should indicate whether the exact or the approximate method of revaluation has been adopted. It should also contain mortality and morbidity assumptions, interest rates, valuation method used, the amount of reserves, and insurance in force under all contracts for which reserves are computed on a preliminary-term basis.

The election is binding for the year of election and for all succeeding taxable years unless permission to change is obtained from the commissioner.

§ 819 Foreign Life Insurance Companies: Distribution to Shareholders

Sec. 819(b)(1)
Regs. sec. 1.819-2(c)

Foreign life insurance companies doing business in the United States may elect alternate methods of determining distributions to shareholders as outlined in sec. 819(b)(1).

The election is made by attaching a statement to the tax return for the year for which the election is made. The return and statement should be filed no later than the due date of the return (including extensions). The statement should indicate the method elected and the name and address of the taxpayer and should be signed by the taxpayer. § 819

A new election must be made for each year, but, once made, it is irrevocable.

Separate Accounting for Contiguous-Country Branches of Domestic Life Insurance Companies

Sec. 819A(c), (g)

A domestic mutual insurance company may elect to establish and maintain a separate account for various income, exclusion, deduction, asset, reserve, liability, and surplus items for a contiguous-country life insurance branch. Such an election remains in effect for all subsequent tax years, unless revoked with the consent of the secretary. The election must be made in the manner prescribed by the secretary not later than the time prescribed by law for filing the tax return for the taxable year (including extensions).

A special rule exists whereby a domestic life insurance company may elect to make a transfer of the assets of a contiguous-country branch to a foreign corporation without application of sec. 317.

Life Insurance Companies: Reinsured Policies § 820

Sec. 820(a)
Regs. sec. 1.820-2

If both the reinsured and reinsuring companies agree, policies reinsured under modified coinsurance contracts

may be treated as if reinsured under conventional coinsurance contracts.

The election should be made in a statement attached to the income tax returns of both the reinsured and the reinsurer for the first taxable year to which the consent is to apply. The taxpayer should include a copy of the original modified coinsurance contract, a separate schedule of designated items, and any other data necessary for the commissioner to ascertain the accuracy of the computations. The return and statement should be filed no later than the due date of the return (including extensions).

The election may be terminated only upon the consent of the commissioner.

§ 821 Mutual Insurance Companies: Alternative Tax

Sec. 821(d)
Regs. sec. 1.821-4(f)

Certain small mutual insurance companies subject to the alternative tax imposed by sec. 821(c) may elect to be subject to the tax imposed by sec. 821(a). (See sec. 821(c)(3) for a definition of those mutual insurance companies subject to the alternative tax.)

A statement should be attached to the company's tax return for the first taxable year for which the election is to apply. The statement should give the company's name and address and be signed by the taxpayer or a duly authorized representative. It should be filed not later than the date prescribed for filing the return (including extensions).

The election is binding for the taxable year for which made and for all succeeding taxable years unless the commissioner consents to a revocation. However, if receipts from sec. 822(b) items do not exceed $150,000 for any taxable year, this election will automatically terminate. If, in any subsequent taxable year, the company again becomes subject to the alternative tax imposed by sec. 821(c), the company must elect again under sec. 821(d) to have sec. 821(a) apply.

Mutual Insurance Companies: Geographical Areas for Concentrated Risk Premium Percentage

Sec. 824(a)(2)(A)
Regs. sec. 1.824-1(a)(3)

A mutual insurance company may make an annual selection of geographical area to be used in determining concentrated risk premium percentage.

The company makes the election by indicating the geographical area selected in a statement attached to the return for the year to which the election is to apply. The statement should include the name and address of the taxpayer and the computation of the concentrated risk premium percentage.

Selection of a geographical area is effective only for the taxable year for which the selection is made. The area selected may be changed within the period of limitation allowed.

Mutual Insurance Companies: Protection Against Loss Account

Sec. 824(d)(5)
Regs. sec. 1.824-3

A taxpayer subject to the tax imposed by sec. 821(a) for any taxable year may elect to subtract from its protection against loss account the amount that would otherwise be in that account at the close of the taxable year. The amount subtracted should be included in the mutual insurance company taxable income (as defined in sec. 821(b)) for the taxable year.

The election is made in a statement attached to the taxpayer's original or amended return for the taxable year for which such election is to apply. If the election is made in an amended return, the amended return and statement must be filed no later than the due date for filing the return (including extensions) for the taxable year following the year to which the election is to apply. The statement should give the name and address of the taxpayer and should be

signed by the taxpayer or a duly authorized representative. The statement should also indicate that the company has elected under sec. 824(d)(5) to reduce the balance of its protection against loss account to zero as of the close of the taxable year and give the amount which would have been in the account.

The election is effective only for the taxable year for which the election is made. The company must make a new election for each taxable year for which the election is to apply. Once an election has been made for any taxable year, it may not be revoked.

§ 825 Forego Carryback Period for Mutual Insurance Companies

Sec. 825(d)(2)

Mutual insurance companies may irrevocably elect to forego the three-year carryback period for an unused loss deduction in order to carry the loss forward. The election must be made by the time for filing the return (including extensions) for the taxable year of the unused loss for which the election is in effect. The election applies to unused losses incurred in the taxable years ending after 1975.

§ 826 Insurance Companies: Reciprocal Underwriters

Sec. 826(a)
Regs. sec. 1.826-1

Except as provided in sec. 826(c), any mutual insurance company that is an interinsurer or reciprocal underwriter taxable under sec. 821(a) may elect to limit its deductions for amounts paid or incurred to its attorney-in-fact to the deductions of its attorney-in-fact that are allocable to income received by the attorney-in-fact from the reciprocal during the taxable year. In no case may such an election increase the amount deductible by the reciprocal for amounts paid or due its attorney-in-fact for the taxable year. The election, in effect, increases the income of the reciprocal by the net income of the attorney-in-fact attrib-

utable to its business with the reciprocal. A reciprocal making the election is allowed a credit for the amount of tax paid by the attorney-in-fact for the taxable year that is attributable to income received by the attorney-in-fact from the reciprocal.

A statement must be attached to the taxpayer's income tax return for the first taxable year for which the election is to apply. It should be filed not later than the due date for filing that return (including extensions) and should contain the information called for in regs. sec. 1.826-1(e) and (f).

The election is binding for the taxable year for which made and for all succeeding taxable years, unless the commissioner consents to a revocation.

Insurance Company Taxable Income — § 832

Sec. 832(e)

A company that writes mortgage guaranty insurance may qualify for additional deductions for amounts required by state law to be set aside in a reserve for mortgage guaranty insurance losses resulting from adverse economic cycles. In addition, any amounts set aside in such reserve for the eight preceding taxable years may also be deducted to the extent such amounts were not deducted in such preceding taxable years.

In order to obtain the deduction, which is effective for years beginning after December 31, 1966, tax and loss bonds must be purchased in an amount equal to the tax benefit attributable to such deduction. The purchase must be made on or before the date that any taxes due for the taxable year for which the deduction is allowed (determined before this deduction) are due to be paid without regard to the installment election under sec. 6152. An extension of time may be possible as provided in sec. 832(e)(2).

Regulated Investment Companies and Real Estate Investment Trusts

Regulated Investment Company: Election of Status — § 851

Sec. 851(b)
Regs. sec. 1.851-2(a)

A corporation may elect to be taxed as a regulated investment company.

The election is made by computing taxable income as a regulated investment company in the corporation's return for the first taxable year for which the election is applicable.

The election, once made, is irrevocable.

Regulated Investment Company: Foreign Tax Credit — § 853

Sec. 853(a)
Regs. sec. 1.853-1, -2, -3, -4
Forms 1118, 1096, 1099

A regulated investment company may elect to attribute its foreign tax credit to its shareholders if it can meet the requirements of sec. 853(a).

§ 853 To make the election, the company must file as part of its return for the taxable year Form 1118 modified so that it becomes a statement in support of the election. It must also attach a statement with Forms 1099 and 1096 setting forth the information required in regs. sec. 1.853-4.

The election is made for each taxable year and must be made by the due date of the return (including extensions). It is irrevocable for the dividend and the foreign taxes paid with respect thereto, to which the election applies.

§ 855 Regulated Investment Company: Timing of Dividends Paid

Sec. 855(a)
Regs. sec. 1.855-1

A dividend declared by a regulated investment company before the due date of its return (including extensions) for a taxable year may, to the extent the company elects, be treated as having been paid during that taxable year. The election is applicable only if the dividend is distributed in the year following such taxable year and not later than the date of the first regular dividend payment made after such declaration.

The election is made in the return filed by the company for the taxable year. In computing its investment taxable income, the company should treat the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year. If the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, the election is made by treating the dividend as a capital gain dividend paid during the taxable year.

This is an annual election and is irrevocable after the time for filing the return has expired.

§ 856 Real Estate Investment Trust: Election of Status

Sec. 856(c)
Regs. sec. 1.856-2(b)

A trust or association may elect to be taxed as a real estate investment trust (REIT).

The trust makes the election by computing its taxable income as a real estate investment trust for the first taxable year for which it desires the election to apply.

Real Estate Investment Trust: Special Rules for Foreclosure of Property

Sec. 856(e)
Temporary regs. sec. 10.1

A real estate investment trust may elect to treat as foreclosure property any real property and related incidental personal property acquired after December 31, 1973, as the result of a bid at foreclosure or an agreement or process of law, when default was existing or imminent on a lease of such property or on indebtedness secured by such property.

The election is made on a property-by-property basis. It must be made by the later of the due date of the return for the year in which the property is acquired or April 3, 1975. It is made by attaching a statement to the return providing the information enumerated in temporary regs. sec. 10.1(f). (For termination of this election, see sec. 856(g).)

Real Estate Investment Trust: Timing of Dividends Paid

Sec. 858(a)(2)
Regs. sec. 1.858-1(b)

Dividends declared by a real estate investment trust before the due date of its return for a taxable year (including extensions) may be considered as having been paid during the taxable year. The election is applicable only if the dividend is distributed in the year following such taxable year and not later than the date of the first regular dividend payment made after such declaration.

The election is made in the return filed by the trust for the taxable year. In computing its investment taxable income, the trust should treat the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year. If the dividend (or portion thereof)

§ 858 to which such election applies is to be designated by the trust as a capital gain dividend, the election is made by treating the dividend as a capital gain dividend paid during the taxable year.

This is an annual election and is irrevocable after the time for filing the return has expired.

Tax Based on Income From Sources Within or Without the United States

Sources of Income: Rentals of Certain Aircraft and Ships

§ 861

Sec. 861(e), (f)
Temporary regs. sec. 12.1

If a taxpayer leases a domestically produced aircraft or vessel used in international commerce to a U.S. person, he may elect to treat the income derived (including any gain on disposition) with respect to the aircraft or vessel as income derived from sources within the United States.

To qualify for the election, the aircraft or vessel must be

- Investment property subject to the investment credit or would be but for sec. 48(a)(5).
- Leased to a U.S. person other than a member of the same controlled group of corporations as the taxpayer.
- Manufactured or constructed in the United States.

The Revenue Act of 1978 added sec. 861(f) to permit a

taxpayer to include the income from certain railroad rolling stock as income from sources within the United States. This provision is applicable to railroad rolling stock placed in service after November 6, 1978, and, if the taxpayer elects, it will apply to all railroad rolling stock placed in service on or before November 6, 1978.

The time and manner for making the election is to be prescribed by regulations. The election may not be revoked without the consent of the secretary of the Treasury.

§ 871 Nonresident Aliens: Real Property Income

Sec. 871(d)
Regs. sec. 1.871-10

A nonresident alien may elect to treat all gains, profits, and income derived during the taxable year from real property or an interest in real property located in the United States as income effectively connected with a U.S. business for such taxable year. (See sec. 871(d) for qualifying types of real property income.)

The election may be revoked only with the consent of the commissioner and remains in force until revoked. Once revoked, a new election may not be made before the fifth taxable year after the year of revocation unless the secretary or his delegate consents to a new election.

§ 882 Foreign Corporations: Effectively Connected Income

Sec. 882(c)(2)
Regs. sec. 1.882-3, -4
Form 1120-F

A nonresident foreign corporation may elect to be taxed on a net basis under sec. 11 on income effectively connected with the conduct of a trade or business within the United States.

To make the election the corporation should file Form 1120-F by June 15, pursuant to a tax convention. The income subject to tax shall be computed pursuant to regs. sec. 1.882-3(a)(2).

Foreign Corporations: Real Property Income

Sec. 882(d)(1)
Regs. sec. 1.882-2(a)

A foreign corporation which derives any income during the taxable year from real property located in the United States or from any interest in that real property, may elect, for that taxable year, to treat all such income as income effectively connected with the conduct of a trade or business within the United States. In such case, such income will be taxable as provided in sec. 882(a)(1) whether or not the corporation is engaged in trade or business within the United States during the taxable year.

The statute provides that the election may be made only in the manner and at the time prescribed by regulations, but, to date, the regulations are silent on this point.

This election, once made, remains in effect for all subsequent taxable years unless revoked with the consent of the commissioner. Once the election has been revoked, a new election may not be made before the fifth taxable year after the year of revocation, unless the secretary or his delegate consents to a new election.

Foreign Income: Foreign Tax Credit

Sec. 901(a)
Regs. secs. 1.901-1; 1.905-2
Forms 1116, 1118

U.S. citizens, domestic corporations, and certain resident aliens may elect to claim foreign taxes as a credit against U.S. income taxes in lieu of deducting them from gross income. The election is not available to individuals electing the optional tax under sec. 3 or the standard deduction under sec. 144, or to a regulated investment company electing the provisions of sec. 853.

The credit is elected on Form 1116 in the case of an individual or on Form 1118 in the case of a corporation. The appropriate form must be attached to the income tax return for the taxable year to which the election applies. (See regs. sec. 1.905-2.)

This is an annual election. It may be changed as long as

the time for filing a claim for refund under sec. 6511(a) (including extensions under sec. 6511(c)) has not expired. (See regs. sec. 1.901-1(d).)

§ 902 Foreign Income: Deemed Tax Credits

Sec. 902
Regs. secs. 1.902-3(c)(5); 1.964-1

To compute its foreign taxes deemed paid, a domestic corporation that owns at least 10 percent of the voting stock of a first-tier foreign corporation may elect to determine the earnings and profits of that foreign corporation on substantially the same basis as a domestic corporation under regs. sec. 1.964-1 exclusive of paragraphs (d) and (e).

The controlling U.S. shareholders of the foreign corporation make the election by filing a written statement to that effect with the director of international operations. The statement must be filed within 180 days after the close of the first taxable year of the foreign corporation during which such shareholders receive a distribution of earnings and profits for which the deemed foreign tax credit is claimed.

The election is effective only for the taxable year for which made, and, once made, it can only be revoked with the consent of the commissioner.

§ 905 Foreign Income: Time to Claim Tax Credit

Sec. 905(a)
Regs. sec. 1.905-1
Forms 1116, 1118

A taxpayer may elect to take the foreign tax credit in the year that the foreign tax accrued, irrespective of the taxpayer's method of accounting.

The initial election must be made on Form 1116 in the case of an individual or on Form 1118 in the case of a corporation. The form should be attached to the income tax return for the taxable year to which the election applies.

An election to claim the foreign tax credit on the accrual basis is binding on all subsequent years.

Tax Credit: Puerto Rico and Possessions § 936

Sec. 936(a)(1), (e)

A corporation operating a trade or business in Puerto Rico and U.S. possessions (other than the Virgin Islands) must include all income in taxable income for tax years beginning after 1975. A taxpayer may elect a sec. 936 credit, which is equal to the U.S. tax attributable to the income from a possession trade or business and from qualified possession investments. A corporation must derive 80 percent or more of its gross income for the immediately preceding three years from sources within a possession, and 50 percent or more of its gross income must be derived from a trade or business in a possession in order to qualify for this credit. Also, dividends from a possession corporation electing the sec. 936 credit are eligible for the 100 or 85 percent dividends-received deduction.

Controlled Foreign Corporations: Life Insurance Taxable Income § 953

Sec. 953(b)
Regs. sec. 1.953-4(c)(2)

For purposes of determining taxable income, certain controlled foreign corporations can elect to determine in the manner prescribed by sec. 818(c) the amount of reserves taken into account as life insurance reserves with respect to contracts for which reserves are computed on a preliminary term basis. (See the election under sec. 818(c), for time, manner, and scope of election.)

Controlled Foreign Corporations: Determination of Qualified Investment in a Less Developed Country § 955

Sec. 955(b)(3)
Regs. secs. 1.953-3, 1.954-5(b), 1.955-3

A U.S. shareholder of a controlled foreign corporation may elect to treat the change in the controlled foreign corporation's qualified investments in a less developed country as a change of the current taxable year even though the change occurs in the following taxable year. (See regs.

 sec. 1.954-5(b)(2) for special rules for election with respect to the first taxable year of the U.S. shareholder.)

Election without consent. To make the election without consent, the U.S. shareholder should file a statement indicating his election for the first year in which or with which the taxable year of the controlled foreign corporation ends and for which year the foreign base company income was excluded because of reinvestment in a less developed country. The statement should include the name, address, and first taxable year of the controlled foreign corporation.

Election with consent. An election may be made at any time with the commissioner's consent. To obtain consent, an application should be mailed to the commissioner prior to the close of the controlled corporation's first year for which the election is to be effective. The application should include the information called for in regs. sec. 1.955-3(b)(2).

Once the election is made, changes in investments in a less developed country for a taxable year will be determined by comparing the current year with the following year instead of with the preceding year. The election will remain in force unless revoked with the approval of the commissioner. The application for revocation must be filed before the close of the taxable year of the corporation for which it is to be effective. In addition to the reasons for revocation, the request should include all the information called for in regs. sec. 1.955-3(c)(3).

§ 962 Controlled Foreign Corporations: Limitation of Tax for Individuals

Sec. 962
Regs. sec. 1.962-1, -2

A U.S. shareholder (individual, trust, or estate) may elect to be subject to tax at corporate rates on the undistributed income and earnings of a controlled foreign corporation attributed to him and to obtain the benefits of a credit for foreign taxes paid with respect to these amounts.

The election is made by filing a statement with the return for the taxable year for which the election is made. The statement should include the information called for in regs. sec. 1.962-2(b).

This is an annual election; once made for a particular

year, it cannot be revoked unless the commissioner approves. The election will be applicable to all controlled foreign corporations having undistributed income includible in the individual's income. The commissioner's approval for revocation will not be granted unless a material and substantial change in circumstances occurs which could not have been anticipated when the election was made. The application for consent to revocation should contain a statement of the facts upon which such shareholder relies in requesting such consent.

Controlled Foreign Corporations: Computation of Historical Costs

Sec 964
Regs. sec. 1.964-1(b)(2), (c)(3), (c)(7)

In computing its earnings and profits, a controlled foreign corporation may elect to determine the historical cost of assets acquired during a taxable year beginning before January 1, 1963, in accordance with the dates and rules in regs. sec. 1.964-1(b)(2) rather than at the date they were acquired.

The election is made in the form of a written statement filed with the director of international operations and must meet the requirements of regs. sec. 1.964-1(c)(3) and (4). The election is made for the first taxable year beginning after 1962 in which the foreign corporation is a controlled foreign corporation or has a deficit in earnings and profits sought to be taken into account. (See regs. sec. 1.964-1(c)(6) for special rules relating to the time for making the election.)

The election, once made, may not be revoked or modified unless the consent of the commissioner is secured [regs. sec. 1.964-1(c)(7)].

Controlled Foreign Corporations: Method of Accounting

Sec. 964(a)
Regs. sec. 1.964-1(c)(2)

For the first taxable year beginning after 1962 in which a foreign corporation is a controlled foreign corporation or

has a deficit in earnings and profits sought to be taken into account under sec. 952(d), it may adopt any method of accounting or election allowable. This will be so even though in previous years its earnings and profits were computed, or its books or financial statements prepared, on a different basis, and even though such election is required to be made in a prior taxable year.

The election is made for the first taxable year beginning after 1962 in which the foreign corporation is a controlled foreign corporation or has a deficit in earnings and profits sought to be taken into account. The election is made in the form of a written statement filed with the director of international operations and must meet the requirements of regs. sec. 1.964-1(c)(3) and (4). This statement should be filed within 180 days after the close of the taxable year to which the election is to apply. (See regs. sec. 1.964-1(c)(6) for special rules relating to the time for making the election.)

The election, once made, may not be revoked or modified unless the consent of the commissioner is secured [regs. sec. 1.964-1(c)(7)].

Controlled Foreign Corporations: Rights of Minority Stockholders

Sec. 964(a)
Regs. sec. 1.964-1(c)(4)

In certain instances, minority shareholders will not be bound by the action taken by the controlling U.S. shareholders in the computation of the earnings and profits of the foreign corporation to the extent it affects their tax liability unless they assent to such treatment.

Assent by these minority U.S. shareholders to actions taken by the controlling U.S. shareholders may be given at any time but not later than 90 days after the shareholder is first informed of such action by the director of international operations. The minority shareholder can signify his assent by filing a written statement with the director of international operations. The statement should include the name and country of organization of the foreign corporation;

his own name, address, and stock interest in the corporation; the nature of the action being assented to; and any other required information.

Controlled Foreign Corporations: Translation of Costs of Sales into Dollars

Sec. 964(a)
Regs. sec. 1.964-1(d)(1)(ii)(c)

Amounts representing items of inventory included in the closing inventory balance may be translated into U.S. dollars at the year-end exchange rate even though not written down to market value. Normally these goods would be translated into dollars at the appropriate exchange rate for the translation period in which the historical cost of these goods was incurred. (See regs. sec. 1.964-1(c)(3) for time and manner of electing.)

Once the year-end rate is so employed, translation may not be made for subsequent years at the appropriate exchange rate for the translation period in which the historical cost of the items of inventory was incurred unless the permission of the commissioner is secured.

Controlled Foreign Corporations: Translation of Prepaid Expenses or Income into Dollars

Sec. 964(a)
Regs. sec. 1.964-1(d)(1)(iv)

Amounts representing expenses or income paid or received in a prior taxable year are generally translated at the appropriate exchange rate for the translation period during which they were paid or received. However, amounts representing prepaid income or expenses may, alternatively, be translated at the year-end rate. (See regs. sec. 1.964-1(c)(3) for time and manner of electing.)

Once the year-end rate is employed, translation may not be made for the subsequent taxable year at the exchange rate for the period of payment or receipt unless the permission of the commissioner is secured.

Controlled Foreign Corporations: Appropriate Exchange Rate

Sec. 964(a)
Regs. sec. 1.964-1(d)(2)

A special monthly exchange rate [regs. sec. 1.964-1(d)(2)(ii)] may be elected for the purpose of translating the income statement into U.S. dollars in lieu of using the appropriate exchange rate [regs. sec. 1.964-1(d)(2)(i)] arrived at by using a simple or weighted average.

The election can be made with respect to any translation period for any taxable year of the foreign corporation after 1962. To be eligible for the election, the closing rate for any calendar month within the translation period cannot have varied more than 3 percent from the closing rate of the preceding calendar month. If this requirement is met, then an exchange rate may be chosen that does not vary by more than 3 percent from the closing rate for any calendar month ending with or within the translation period. (See regs. sec. 1.964-1(c)(3) and (6) for time and manner of making the election.)

The election is effective only with respect to the translation period for which it is made. Once made, it is irrevocable with respect to that period unless the commissioner consents to revocation. (See regs. sec. 1.964-1(c)(7).)

Controlled Foreign Corporations: Translation Period for Conversion to Dollars

Sec. 964(a)
Regs. sec. 1.964-1(d)(6)

In general, the translation period for converting foreign currency into dollars is a taxable year. However, in the event of currency fluctuations, the foreign corporation may elect to divide the taxable year into groups consisting of calendar months or consecutive calendar months as specified in the election. Each such group will constitute a separate translation period.

This election may be made for any taxable year of the foreign corporation beginning after 1962. (For time and manner of electing, see regs. sec. 1.964-1(c)(3) and (6).)

Such election shall be effective only with respect to the

taxable year for which it is made. Once made, the election is irrevocable with respect to that year unless the commissioner consents to revocation. (See regs. sec. 1.964-1(c)(7).)

Controlled Foreign Corporations: Determination of Earnings and Profits

Sec. 964(a)
Regs. sec. 1.964-1(f)

An election can be made to determine the earnings and profits of a foreign corporation for a taxable year exactly as if it were a domestic corporation, provided its books of account regularly maintained for the purpose of accounting to its shareholders are kept in U.S. dollars and in accordance with accounting principles generally accepted in the United States.

The election is made in the form of a written statement filed with the director of international operations and must meet the requirements of regs. sec. 1.964-1(c)(3) and (4). This statement should be filed within 180 days after the close of the taxable year for which the election is to apply. (See regs. sec. 1.964-1(c)(6) for special rules relating to the time for making the election.)

Such election shall be effective only for the taxable year with respect to which the election is made. The election, once made, may not be revoked or modified unless the consent of the commissioner is secured. (See regs. sec. 1.964-1(c)(7).)

Export Trade Corporations: Determining Investment in Export Trade Assets

§ 970

Sec. 970(c)(4)
Regs. sec. 1.970-2
Form 3646

In lieu of determining the changes in a controlled foreign corporation's investments in export trade assets for a taxable year, based upon a comparison of the opening and closing yearly balances, the U.S. shareholder may elect to determine such increase or decrease as of the 75th day after the close of the taxable year. In the case of export trade assets that are facilities, the change in such corporation's invest-

ments that are facilities may be determined either as of the close of such corporation's following taxable year or under the 75-day rule above.

Election without consent. A U.S. shareholder may make either or both elections without the consent of the commissioner by filing a statement with his return for his taxable year in which or with which ends the first taxable year of the controlled foreign corporation in which such shareholder owns 10 percent or more of the total combined voting power of all classes of stock, and such corporation realizes subpart F income that is reduced because it is an export trade corporation. The statement should contain the information called for in regs. sec. 1.970-2(b)(1).

Election with consent. An application for consent to elect should be made by the U.S. shareholder in a letter to the commissioner mailed before the close of the first taxable year of the controlled foreign corporation with respect to which the shareholder desires to determine an exclusion under sec. 970(a). The application should include all the information called for in regs. sec. 1.970-2(b)(2).

Unless the election is revoked or the U.S. shareholder disposes of his stock, an election made under this section will apply to the year for which made and to all following years. To revoke the election, an application for revocation should be mailed to the commissioner before the close of the first taxable year of the controlled foreign corporation to which the revocation is to apply. The application should contain all the information called for in regs. sec. 1.970-2(c)(3)(ii). Approval will not be granted unless the taxpayer and the commissioner agree to terms, conditions, and adjustments for the revocation.

§ 992 DISC: Election of Status

Sec. 992(b)(1)
Regs. sec. 1.992-2(a)
Form 4876

A qualified corporation can elect to be treated as a domestic international sales corporation (DISC) for taxable years beginning after December 31, 1971.

To make the election, a corporation must file a statement of election with the service center with which it files its income tax return. The statement should be titled "Election to Be Treated as a DISC," and should contain the information called for in Rev. Proc. 72-12.

For new corporations whose first taxable year begins in 1972, the election may be filed within 90 days after the beginning of such taxable year. For corporations in existence before 1972, the election should generally be filed during the 90-day period preceding the beginning of the taxable year beginning in 1972.

To be effective, all persons who are stockholders in the electing corporation must consent to the election. These statements of consent should generally be filed within 90 days after the first day of the first taxable year for which the election will apply and can be attached to the statement of election. The consent and the manner of consenting are prescribed in Rev. Proc. 72-12.

An election to be treated as a DISC can be revoked by filing a termination. The termination is effective for the taxable year in which it is filed, if filed during the first 90 days of such taxable year. In the event the revocation is filed after the first 90 days of the taxable year, the termination will not be effective until the following taxable year.

DISC: Deficiency Distributions to Meet Qualification Requirements

Sec. 992(c)

If a DISC fails to satisfy the conditions specified in sec. 992(a)(1)(A) relating to gross receipts, or sec. 992(a)(1)(B) relating to qualified assets, it may elect to make a deficiency distribution after the close of its taxable year with regard to the taxable income attributable to nonqualified receipts or with respect to nonqualified assets, and thus avoid disqualification as a DISC.

When a DISC makes a deficiency distribution, it should be designated as a distribution to meet qualification requirements.

§ 994 DISC: Intercompany Pricing Rules

Sec. 994(a)
Regs. sec. 1.994-1(c)

In the case of a sale of export property to a DISC by a related party, the transfer price will be deemed to be a price that would allow the DISC to derive taxable income attributable to the sale of such property in an amount that does not exceed the greatest of

1. Four percent of the qualified export receipts on the sale of the property by the DISC plus ten percent of the export promotion expenses of the DISC attributable to these receipts,
2. Fifty percent of the combined taxable income of the DISC and the related party which is attributable to the qualified export receipts plus 10 percent of the export promotion expenses of the DISC attributable to these receipts, or
3. Taxable income based upon the sale price actually charged (but subject to the rules provided in sec. 482).

By allowance of this choice of methods, the DISC and its supplier may make adjustments upwards or downwards following the close of the taxable year in which the DISC sells the goods to obtain the most favorable allocation of income permitted by these rules.

DISC: Certain Freight Expenses

Sec. 994(c)

If a DISC elects to ship export property aboard U.S. flag vessels and U.S.-owned and -operated aircraft where the law does not require that such property be shipped aboard such aircraft or vessels, the DISC can then include 50 percent of these freight expenses in export promotion expenses. Insurance costs should not be included in freight expense.

Gain or Loss on Disposition of Property

Regulated Investment Company Stock: Basis § 1012

Sec. 1012
Regs. sec. 1.1012-1(e)

When shares of stock of a regulated investment company have been left by a taxpayer in a custodial account maintained for periodic acquisition and redemption of such shares, the taxpayer may elect to use the "average basis" method of determining the cost of shares upon their disposal. (For determination of "average basis" see regs. sec. 1.1012-1(e)(2).)

The election is made by indicating on the return to which the election is applicable that an "average basis" has been used to determine gain or loss on the sale or transfer of shares. The election can be made for any year for which it is to apply within the time for filing the return (including extensions) for that year. It is incumbent upon the taxpayer to maintain the necessary records to substantiate the "average basis." This election, once made with respect to any such shares held in any such account, will apply to all other such shares in such account and to all other such shares in all other custodial accounts with exceptions as specified in regs. sec. 1.1012-1(e)(1)(ii). (For specific details on how this election is made and its effects, see regs. sec. 1.1012-1(e)(6).)

This election may not be revoked without the prior consent of the commissioner.

§ 1031 Exchange of Property Held for Productive Use or Investment

Sec. 1031(a)

When a taxpayer is faced with a transaction that will result in a gain, he may plan to avoid the gain by applying section 1031.

Section 1031(a) provides that a taxpayer will not recognize gain or loss if property used in a trade or business or held for investment is exchanged solely for like-kind property to be used in a trade or business or held for investment.

If the taxpayer elects to report a gain or loss on the transaction, he must structure the exchange in such a way that the property transferred consists of other than property or money that is not classified as like-kind property.

§ 1033 Involuntary Conversions: Treatment of Gain

Sec. 1033(a)(2)(A)
Regs. sec. 1.1033(a)-2

A taxpayer can defer the recognition of gain on an involuntary conversion by not including in gross income for the year the gain realized from the conversion. If the taxpayer so chooses, the gain will be recognized only to the extent that it exceeds the cost of replacement property purchased by the taxpayer within the required time period.

While nonrecognition is elected by not reporting the gain, the taxpayer should report all the details of the conversion in the year in which any gain is realized. If the election is made but the converted property is not replaced within the required period of time, or if it is replaced at a cost less than the amount of gain, or if a decision is made not to replace the property, then the taxpayer must file an amended return with a recomputed tax for the year in which the gain was realized.

Involuntary Conversion of Contaminated Livestock

Sec. 1033(f)

A farmer may invest the proceeds received from an involuntary conversion of livestock into real or other property without tax consequences, provided that the property

acquired is used for farming. This election is permitted when it is not feasible to reinvest the proceeds into similar property because of soil or other contamination.

This provision, which will apply retroactively to tax years beginning after 1974, grants farmers the benefit of the nonrecognition-of-gain rules of sec. 1033.

Condemnation of Real Property: Outdoor Advertising Displays

Sec. 1033(g)(3)

A taxpayer may elect to treat property that constitutes an outdoor advertising display as real property for the purpose of obtaining nonrecognition-of-gain treatment on involuntary conversion as a result of a condemnation. The election may not be made for any property on which investment credit has been claimed or on which additional first-year depreciation has been taken. The election may not be revoked without permission of the commissioner.

Deferral of Gain on Sale of Personal Residence § 1034

Sec. 1034(a)

A taxpayer must defer paying tax on the gain on the sale of his personal residence if he purchases another principal residence

- Within an 18-month period either beginning before or ending after the date the old residence is sold, and
- If the purchase price of the new residence equals or exceeds the adjusted sales price of the old residence.

If the taxpayer elects to pay a tax on the gain from the sale of his principal residence, he must plan to avoid the above provision.

Replacement of Residence: Basis of New Residence

Sec. 1034(g)
Regs. sec. 1.1034-(f)
Form 2119

By filing a consent, a married couple may obtain the benefits of nonrecognition of gain on disposition of an old

residence, even though their new residence is not owned by them in the same ownership proportions as their old residence. Both the old residence and the new residence must be the couple's principal residence.

To make the election, the taxpayer and his spouse should file a consent on Form 2119 with their income tax return for the year in which the gain on the sale of the old residence is realized.

Condemnation: Treatment as Sale

Sec. 1034(i)(2)
Regs. sec. 1.1034-1(h)(2)

A taxpayer may elect to treat a condemnation, or a sale or exchange under threat of condemnation, of a personal residence as a sale governed by sec. 1034 rather than as an involuntary conversion under sec. 1033.

To make the election, the taxpayer should attach a statement to his income tax return for the taxable year in which disposition of the old residence occurs. The statement should indicate that the taxpayer is making an election under sec. 1034(i)(2) to treat the disposition of his old residence as a sale. In addition, the statement should contain the information called for by regs. sec. 1.1034-1(h)(2)(iii).

Once made, this election is irrevocable.

§ 1039 Sale of Low-Income Housing: Nonrecognition of Gain

Sec. 1039
Regs. sec. 1.1039-1(b)(4)

In the case of an approved disposition of a qualified housing project, the taxpayer may elect to have any gain realized on the disposition deferred and reduced by the basis of the new project by reinvesting the sale proceeds in construction, reconstruction, or acquisition of another qualified housing project within a prescribed time period.

The election is made by attaching a statement to the return for the taxable year in accordance with regs. sec. 1.1039-1(b)(4)(iii). The election must be made not later

than the time for filing the return for the taxable year of the election (including extensions).

Generally, the election may not be revoked without the consent of the commissioner.

Transfer of Appreciated Property to a Foreign Entity — § 1057

Sec. 1057

A taxpayer may elect, in lieu of paying a 35 percent excise tax under sec. 1491 on the transfer of appreciated property from the United States to a foreign corporation, partnership, or trust, to treat such transfer as a taxable sale or exchange. The gain recognized is the excess of the fair market value of the property transferred over the adjusted basis in the hands of the transferor.

Sales to Effectuate FCC Policy: Treatment as Involuntary Conversion — § 1071

Sec. 1071(a)
Regs. sec. 1.1071-1, -2, -3, -4

A taxpayer may elect to treat a sale or exchange of property, including stock in a corporation, to effectuate FCC policy as an involuntary conversion under sec. 1033. (Also see the following election.)

The election is made in a written statement (in duplicate) attached to the tax return for the taxable year in which the sale or exchange occurs. Where possible, the FCC certificate required by regs. sec. 1.1071-1 should be attached to the statement.

The election is binding for the taxable year in which the sale or exchange occurs and for all subsequent years.

Sales to Effectuate FCC Policy: Nonrecognition of Gain

Sec. 1071(a)
Regs. sec. 1.1071-1, -2, -3, -4

When FCC policy necessitates the sale or exchange of certain property, the taxpayer may elect to avoid recogni-

tion of gain on the sale. This can be accomplished by reducing the basis of certain property owned by the taxpayer by the amount of gain realized on the sale to the extent it was not treated as an involuntary conversion [regs. sec. 1.1072-2].

The election is made in a written statement (in duplicate) attached to the tax return for the taxable year in which the sale or exchange occurs. Where possible, the FCC certificate required by regs. sec. 1.1071-1 should be attached to the statement. *Note:* This election may be exercised either independently or in conjunction with the previous election above.

The election is binding for the taxable year in which the sale or exchange occurs and for all subsequent years.

Sales in Obedience to SEC Orders: Nonrecognition of Gain

Sec. 1081(b)
Regs. sec. 1.1081-4
Form 982A

Certain corporations may elect to have the gain on the sale or exchange of property in obedience to an SEC order not recognized but instead applied to reduce the basis of other property in accordance with sec. 1082(a)(2) and regs. sec. 1.1082-3.

To qualify for the benefits of sec. 1081(b), the corporation must file a consent to have the basis of its property adjusted under sec. 1082(a)(2). The consent should be made on Form 982A and attached to the corporation's tax return for the taxable year in which the transfer occurs. Permanent records of the transaction must be kept as outlined in regs. sec. 1.1081-11(h).

Once made, the election is irrevocable.

Capital Gains and Losses

Real Property: Subdivided and Improved — § 1237

Sec. 1237(b)(3)(c)
Regs. sec. 1.1237-1(c)(5)

If a taxpayer meets certain requirements, he may elect neither to adjust basis for, nor to deduct as expense, the cost of specified improvements to subdivided real property and thus obtain capital gain treatment on a sale that otherwise would produce ordinary income. Before the option is available, the taxpayer must satisfy the conditions stipulated in regs. sec. 1.1237-1(c)(5)(i).

The election is made by filing a statement in accordance with regs. sec. 1.1237-1(c)(5)(iii) with the tax return for the taxable year in which lots subject to the election were sold.

Once made, the election is irrevocable.

Farmers: Excess Deductions Account — § 1251

Sec. 1251(b)(4)
Regs. sec. 1.1251-2(d)(1)
Form 3115

In lieu of maintaining an excess deductions account, a farmer may elect to compute his farm income by using inventories and by charging to a capital account certain capital charges that he might otherwise treat or elect to treat as deductions.

§ 1251 An election under this section must be made in a statement attached to a return timely filed (including extensions) for the taxable year to which it is to apply. *Note:* If this election necessitates an accounting method change, such change will be considered a change not initiated by the taxpayer, for purposes of sec. 481(a)(2). However, if a change of accounting method is necessary, the taxpayer should file Form 3115.

This election is binding upon the taxpayer for the year of election and for all subsequent years. It may not be revoked without the consent of the commissioner.

§ 1253 Franchises: Contingent Payments by Franchisee

Sec. 1253(d)
Proposed regs. sec. 1.1253-1(c)

Buyers of franchises purchased prior to January 1, 1970, may elect to treat contingent payments made after 1969 as deductible trade or business expenses under sec. 162 for a period of ten years (that is, for payments made in taxable years ending after December 31, 1969, and beginning before January 1, 1980). Payments made after that date with respect to transfers made before 1970 will revert to treatment under the law prior to the Tax Reform Act of 1969.

The manner and time for making this election is described in proposed regs. sec. 1.1253-3(a) and (b).

Readjustment of Tax Between Years and Special Limitations

Income Averaging § 1304

Sec. 1304(a)
Regs. sec. 1.1304-1
Schedule G, Form 1040

Individuals may elect the benefits of income averaging if they can meet the conditions set forth in sec. 1303. However, if the taxpayer elects income averaging, several other provisions are inapplicable, including the alternative capital gains tax and the maximum tax on earned income. (See sec. 1304(b).)

The election is made annually by filing an original (or amended) Form 1040 with Schedule G attached.

The taxpayer may change his election any time before the expiration of the period (including extensions) set forth in sec. 6511 for making a claim for credit or refund. *Note:* A taxpayer may subsequently become disqualified or qualified for income averaging through subsequent events, such as net operating loss carrybacks.

§ 1313 Correction of Error: Agreement with IRS

Sec. 1313(a)(2), (4)
Regs. sec. 1.1313(a)-2, -4

In order to obtain a "determination" on an adjustment arising from the erroneous treatment of an item of income, deduction, credit, etc., under sec. 1311, a taxpayer may enter into a closing agreement under sec. 7121 or a special agreement under sec. 1313(a)(4).

If the taxpayer chooses to enter into a closing agreement under sec. 7121, a request for a closing agreement must be submitted at any time before the case is docketed for the Tax Court. The commissioner's approval is necessary for the agreement to become final. A sec. 1313(a)(4) agreement may be entered into at any time as long as no other final determination has been made. A determination under a sec. 1313(a)(4) agreement does not become final until the tax liability to which the determination relates becomes final. (See regs. sec. 1.1313(a)-4 for the contents of the agreement.)

§ 1351 Foreign Expropriation Loss Recoveries

Sec. 1351

A taxpayer may elect to limit the tax on an expropriation loss recovery to the benefit previously received in deducting the loss (applying current tax rates), taking into account whether the loss offset ordinary income or capital gain. This method is in lieu of the general method, under which the recovery is included in income to the same extent that the deduction for the loss initially resulted in tax benefits, without giving consideration to whether the loss originally offset income that was not subject to a full tax, such as capital gain.

Regulations regarding time and manner of making this election have not been issued to date.

Election of Certain Small Business Corporations Regarding Taxable Status

Small Business Corporations: Election of Taxable Status

§ 1372

Sec. 1372
Regs. sec. 1.1372-1,-2,-3,-4
Form 2553

An eligible small business corporation may elect not to be taxed on its income (except for certain capital gains) but instead to have its income taxed directly to its shareholders.

The Revenue Act of 1978 permits a corporation, beginning January 1, 1979, to elect subchapter S status at any time during the prior taxable year or during the first 75 days of the current year.

The new law also mitigated the adverse effects that corporations faced if the time limits for making the subchapter S election were not strictly followed. Under prior law, if an untimely election was discovered, the corporation was taxed as a regular corporation for every subsequent year. Under the new law, if the election is made after the 75-day period, the corporation is taxed as a regular corporation for the current year, and the election will be effective for the following year.

§ 1372 The election is made on Form 2553 and is effective for the taxable year in which the election is made and for all succeeding taxable years until the election is terminated.

Termination occurs when any of the following events occur:

1. A new shareholder affirmatively refuses to consent to the election.
2. All shareholders consent to a revocation of the election.
3. The corporation ceases to be a small business corporation.

Small Business Corporations: Investment Credit Recapture

Sec. 1372
Regs. sec. 1.1372-6

If an electing subchapter S corporation and its shareholders execute an agreement to be jointly and severally liable for the recapture of the investment credit claimed by the corporation prior to the sec. 1372 election, no recapture will occur by reason of the subchapter S election. (See the election under regs. sec. 1.47-4(b).)

§ 1375 Small Business Corporations: Distributions of Previously Taxed Income

Sec. 1375
Regs. sec. 1.1375-4(c)

A subchapter S corporation may elect to treat distributions of previously taxed income as distributions out of accumulated earnings and profits, thus making the distribution a taxable dividend rather than a nontaxable distribution.

The election is made in a statement filed with a timely return and applies to all distributions during the year of the election in excess of current earnings.

The election applies only to the year for which it is made. A new election may be made for any subsequent year.

Tax on Self-Employment Income

Self-Employment Tax: Farmers § 1402

Sec. 1402(a)
Regs. sec. 1.1402(a)-15
Schedule SE, Form 1040

A farmer may elect to report self-employment income as 66⅔ percent of his trade or business gross income if his trade or business income does not exceed $2,400. If his gross income is more than $2,400, and net income from such trade or business is less than $1,600, then the net earnings from self-employment derived from such trade or business may, at his option, be deemed to be $1,600.

The taxpayer makes the election by computing the net income from self-employment under the optional method set forth on Schedule SE, Form 1040.

The election may be revoked by filing an amended return.

Self-Employment Tax: Retired Partners

Sec. 1402(a)-10
Regs. sec. 1.1402(a)-17

Payments to a retired partner are exempt from self-employment tax if certain conditions are met, as described in regs. sec. 1.1402(a)-17.

Self-Employment Tax: Ministers, Etc.

Sec. 1402(g)
Regs. sec. 1.1402(e)-2A(a), (b); -3A(a)
Form 4361

Ministers, members of religious orders, and Christian Science practitioners may elect *not* to be covered by social security.

To request exemption, those individuals should file a certificate on Form 4361 with the office specified in the form. The application must be filed by the later of (1) the due date of the income tax return (including extensions) for the second year ending after 1967, or (2) the due date (including extensions) of the second income tax return which has net earnings from self-employment of $400 or more.

Once made, the election is irrevocable.

Self-Employment Tax: Conscientious Objectors

Sec. 1402(g)
Regs. sec. 1.1402(h)-1
Form 4029

Any individuals conscientiously opposed to insurance (including social security) by reason of their adherence to teachings of established tenets or teachings of the religious sect of which they are members may file an application for exemption from self-employment coverage.

The application for exemption should be filed on Form 4029 with the IRS official designated on the form. It should be filed by the due date of the return for the first taxable year in which the taxpayer has self-employment income.

The election is irrevocable unless the individual or the sect ceases to meet the requirements for which the exemption was granted.

Tax on Transfers to Avoid Income Tax

Overwithholding Reimbursement § 1461

Sec. 1461
Regs. sec. 1.1461-4
Form 1042

Overwithholding by withholding agent may be reimbursed by filing Form 1042.

Nontaxable Transfers: Appreciated Securities § 1492

Sec. 1492
Regs. sec. 1.1492-1

Taxpayers can avoid payment of the transfer tax (imposed by sec. 1491) on appreciated securities transferred to certain foreign entities by securing an agreement in advance from the commissioner that the transfer was not in avoidance of federal income tax.

The election is made by submitting a statement of facts relating to the plan under which the transfer is to be made, together with a copy of the plan, if in writing, and by requesting an advance ruling by the commissioner.

Consolidated Returns

Consolidated Returns: Privilege to File § 1501

Secs. 1501, 1502
Regs. sec. 1.1502

An affiliated group of corporations may elect to file a consolidated return in lieu of filing separate returns. (See the election under regs. sec. 1.1502-75(a)(1).)

Consolidated Returns: Foreign Tax Credit § 1502

Sec. 1502
Regs. sec. 1.1502-4(a)

The credit allowed under sec. 901 for foreign taxes will be allowed to a consolidated group only if the common parent chooses to use such credit in the computation of tax for the consolidated return. (See the election under sec. 901.)

Consolidated Returns: Estimated Tax Payments

Sec. 1502
Regs. sec. 1.502-5(a)

If separate returns are filed after a group has filed a declaration of estimated tax on a consolidated basis, it can allocate the payments among the separate tax liabilities of

 its members in any manner designated by the common parent that is satisfactory to the commissioner.

Consolidated Returns: Deferred Intercompany Transactions

Sec. 1502
Regs. sec. 1.1502-13(c)(3)

An affiliated group of corporations may elect not to defer gain or loss on deferred intercompany transactions with respect to all property *or* any class or classes of property.

To make the election, an application for the commissioner's consent must be filed by the due date of the return (not including extensions) for the taxable year to which the election is to apply.

The election is binding upon all members of the group for the consolidated return year for which made and for all subsequent consolidated return years ending prior to the first year for which the group does not file a consolidated return, unless the consent of the commissioner is obtained.

Consolidated Returns: Gain or Loss on Divestiture

Sec. 1502
Regs. sec. 1.1502-13(f)(3)

If, as a result of a divestiture required by the courts, any deferred gain or loss on intercompany transactions is required to be restored, such deferred income may be taken into account over a period not in excess of 10 years. (See regs. sec. 1.1502-13(f)(3).)

This provision is available only through a closing agreement under sec. 7121, which under certain specified circumstances may not be granted.

Consolidated Returns: Built-In-Deduction Transitional Rules

Sec. 1502
Regs. sec. 1.502-15(a)(3)

If assets were acquired before January 4, 1973, the taxpayer has the option of applying regs. sec. 1.1502-15(a)

as it stood before issuance of T.D. 7246. If assets were acquired before April 17, 1968, the taxpayer may apply the provision stated in regs. sec. 1.1502-31A(b)(9).

Consolidated Returns: Allocation of Mine Exploration Expenses

Sec. 1502
Regs. sec. 1.1502-16(b)

The consolidated mine exploration expenditure limitation (regs. sec. 1.1502-16(a)) may be allocated to each member of a group according to a plan. No member may be allocated an amount that would exceed the amount it could have deducted on a separate return. If no plan is filed, then these expenditures will be allocated according to the formula set forth in regs. sec. 1.1502-16(b)(2).

The plan of allocation should be included in a statement containing the information required by regs. sec. 1.1502-16(b)(1). The statement should be attached to the consolidated return and filed on or before the due date of such return (including extensions).

The allocation may not be changed after the due date of the return (including extensions).

Consolidated Returns: Reduction of Basis for Excess Losses

Sec. 1502
Regs. sec. 1.1502-19(a)(6)

If a corporation disposes of stock of a subsidiary, it may elect to apply all or any part of the excess loss account (determined under regs. sec. 1.1502-14 and -32) with respect to such stock to reduce the basis of any other stock or obligation of the subsidiary held by the disposing member immediately before the disposition. Only the excess loss account that remains after the reduction of basis need be included in income under regs. sec. 1.1502-19(a). If regs. sec. 1.1502-19(a)(4) (which deals with excess losses occurring prior to January 1, 1966) applies, a special sequence of loss reductions is prescribed.

The regulations are silent on the procedure to be followed in making this election.

Consolidated Returns: Deemed Dividends

Sec. 1502
Regs. sec. 1.1502-32(f)(2)

If members of the same group own all of a subsidiary's stock throughout the subsidiary's taxable year, the group may elect to treat the subsidiary's earnings and profits as distributed and simultaneously contributed to the subsidiary's capital as of the first day of the year.

The election is made by submitting a statement to the Internal Revenue Service by the due date of the return for such year (including extensions).

Consolidated Returns: Earnings and Profits

Sec. 1502
Regs. sec. 1.1502-33(c)(4)(iii)

A group may elect to adjust the earnings and profits of a member for a taxable year by an amount equal to any change in such member's basis or excess loss account for its stock in a subsidiary.

The election is made by submitting a statement on or before the due date (including extensions) of the consolidated return for the first taxable year for which the election is to apply. It should be submitted to the internal revenue office where the group files.

The election is irrevocable.

Consolidated Returns: Allocation of Income Taxes

Sec. 1502
Regs. sec. 1.1502-33(d)(1)

For the purpose of determining the earnings and profits of each member of a group for a consolidated return year after December 31, 1965, a modified method of allocating the group's tax liability among its members [regs. sec. 1.1502-33(d)(2)] may be elected in conjunction with an allocation election made under regs. sec. 1.1552-1.

The election should be made in a statement attached to the timely filed consolidated return (including extensions) for the first taxable year to which the group desires the election to apply. It also may be made after the return is filed by submitting a statement to the internal revenue office where such return was filed prior to the due date of the return (including extensions). The election will be ineffective unless the group has also made an election to currently reflect investment adjustments in the earnings and profits of its members. (See the election under regs. sec. 1.1502-33(c)(4)(iii) above.) Approval is required unless the election is made for the first consolidated return year of the group.

Election of a modified method of allocation is irrevocable for the year made and for all future consolidated return years unless the commissioner authorizes a change to another method. The authorization for change must be approved before the due date of the return for the year of change.

Consolidated Returns: Election to File

Sec. 1502
Regs. sec. 1.1502-75(a)(1)
Forms 851, 1122

An affiliated group of corporations may elect to file a single consolidated tax return rather than multiple separate returns.

The election is made by filing a consolidated return. That return should be filed by the due date of the common parent's return (including extensions). (See regs. sec. 1.1502-75(h) for details pertaining to forms that must be attached to the consolidated return.)

This election, once made, may not be withdrawn after the last day for filing. If a consolidated return was filed in the immediately preceding taxable year, the group must continue to file consolidated returns unless it makes an election to discontinue filing under regs. sec. 1.1502-75(c). (See the election below.)

Consolidated Returns: Discontinuance

Sec. 1502
Regs. sec. 1.1502-75(c)

An affiliated group of corporations may apply for the commissioner's permission to discontinue filing consolidated returns.

To do this, the common parent should make an application to the commissioner showing cause not later than the 90th day before the due date of the consolidated return (including extensions). (For a definition of "good cause" and for certain exceptions to the 90-day limitation, see regs. sec. 1.1502-75(c)(1)(i), (ii), and (iii).)

If a group has filed an election to discontinue filing consolidated returns and wishes to exercise the election, then the common parent must file a separate return for such year on or before the last day (including extensions) for filing the consolidated return for such year.

Consolidated Returns: Inclusion of Ineligible Corporations

Sec. 1502
Regs. sec. 1.1502-75(f)(1)

If a consolidated return erroneously includes the income of two or more corporations which were not members of the group but which constitute another group in themselves, these corporations may elect to file a consolidated return instead of computing their tax on a separate return basis.

This election requires the commissioner's consent.

Consolidated Returns: Erroneous Inclusion of Nonmember

Sec. 1502
Regs. sec. 1.1502-75(f)(2)

If the income of a nonmember corporation was erroneously included in a consolidated return, the consolidated tax payment must be allocated between the group and the

nonmember. This allocation can be made in any manner desired by the corporations included in the consolidated return, subject to approval by the commissioner.

Consolidated Returns: Adoption of Common Fiscal Year

Sec. 1502
Regs. sec. 1.1502-76(a)(1)

Members of a consolidated group must file on the basis of the common parent's taxable year; however, any member may elect a 52-53-week taxable year providing the taxable years of all the members end within the same seven-day period.

To make the election, the consent of the commissioner is required. The request for consent must be filed not later than 30 days before the due date for filing the consolidated return (not including extensions).

Consolidated Returns: Taxable Year and Periods of 30 Days or Less

Sec. 1502
Regs. sec. 1.1502-76(b)(5)(i), (ii)

If a corporation became a member of a group within 30 days after the beginning of its taxable year, or left such group within 30 days, it has the option to include its income and deductions during such time in the consolidated return.

If a corporation was a member of a group for 30 days or less, it may, at its option, be considered as not having been a member of the group for such year.

Consolidated Returns: Separate Short-Period Returns

Sec. 1502
Regs. sec. 1.1502-76(c)

If a group has not filed its consolidated return by the due date (including extensions) of a subsidiary's separate

return, pending the group's final decision on whether to file a consolidated return, the subsidiary must tentatively file either a short-period separate return for the portion of the year not to be included in the consolidated return, if such a return is to be filed, or a separate return for the full taxable year.

Whether this tentative return will eventually constitute the subsidiary's actual return for the period will depend on whether or not the group files a consolidated return.

(See regs. sec. 1.1502-76(c)(2) for the procedures the subsidiary must follow in the event that it is required to file a substituted or amended return.)

§ 1504 Definition of Affiliated Group: Insurance Companies

Sec. 1504(c)

For taxable years beginning after December 31, 1980, the common parent of an affiliated group may elect to include its affiliated life insurance or mutual insurance company in the consolidated return it files with other corporations. Once the election is made, it may not be revoked without the commissioner's permission. The election may be made only if all companies have been members of the affiliated group for five taxable years immediately preceding the taxable year for which the consolidated return is filed.

Consolidated Returns: Mexican or Canadian Subsidiary

Sec. 1504(d)
Regs. sec. 1.1504-1

If a domestic corporation owns or controls 100 percent of the stock of a corporation organized under the laws of Canada or Mexico and maintained solely for the purpose of complying with the laws of such country, the foreign subsidiary may, at the option of the domestic corporation, be treated as a domestic corporation.

Earnings and Profits: Allocation of Tax Liability

Sec. 1552
Regs. sec. 1.1552-1

For purposes of determining the earnings and profits of each of its members, an affiliated group can elect to allocate the tax liability of a group among its members in accordance with one of several methods.

The election should be made in a statement attached to the group's first consolidated return not later than the time for filing (including extensions). The statement should specify the method selected. If the group has chosen a discretionary method permitted by sec. 1552(a)(4), the commissioner's approval must be obtained within the time specified above. Failure to elect a method will make the method of allocation prescribed under sec. 1552(a) mandatory.

The election, once made, is binding for the year of election and for all subsequent consolidated return years. The election may not be revoked unless authorization for change is granted by the commissioner.

Consolidated Returns: Allocation of Surtax Exemption

Sec. 1552
Regs. sec. 1.1552-1(a)(2)(i)(ii)

In allocating its consolidated tax among its members under the separate return liability method [sec. 1552(a)(2)], an affiliated group may apportion the surtax exemption equally or in any other manner.

If the surtax exemption is allocated other than equally, a schedule must be attached to the consolidated return. This election applies only where all members of the controlled group are filing in the consolidated return.

Controlled Corporations

Certain Multiple Tax Benefits: Apportionment — § 1561

Sec. 1561(a)
Regs. sec. 1.1561-3

Component members of a controlled group of corporations may elect to allocate the surtax exemption and may be able to elect to allocate the accumulated earnings tax credit and the limitation on small business deductions of life insurance companies in some manner other than equally.

For the time and manner to make this election, see regs. sec. 1.1561-3.

Overlapping Controlled Groups: Choice of Group — § 1563

Sec. 1563(b)(4)
Temporary regs. sec. 13.16-1(b)
Regs. sec. 1.1563-1(c)(2)

A corporation which is a member of more than one brother-sister controlled group on a December 31 after 1969 may select the group with which it wishes to be included. Otherwise, the district director with audit jurisdiction over such corporation will make the selection.

§ 1563 The election is made in a statement designating the group in which the corporation has elected to be included and should provide the information called for in the regulations. The statement must be filed by the due date (including extensions) of the corporation's tax return for the taxable year that includes the first December 31 after 1969 on which the corporation is a member of more than one controlled group.

Once filed, the election is irrevocable. It will remain effective until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

Estate and Gift Taxes

Estates: Alternate Valuation Dates § 2032

Sec. 2032
Regs. sec. 20.2032-1
Form 706

The executor of an estate may elect to value the estate at either the date of the decedent's death or six months after his death.

The executor must make the election within the time allowed for filing the estate tax return (including extensions). The election is made by affirmatively answering the question in the estate tax return (Form 706). If the alternate valuation date is chosen, the return must include

1. An itemized statement including a description and valuation for all property included in the estate on the date of death.
2. An itemized list of all distributions, sales, exchanges, and other distributions of property during the six-month period, including the dates of disposition or sale.
3. A detailed schedule showing the value of each item in the estate on the date of valuation.

The election is irrevocable once the proper time for filing the estate tax return has passed. Prior to that time, the election can be revoked by filing an amended return.

§ 2032 Valuation of Certain Real Property

Sec. 2032A

An executor may elect, in determining the gross estate of a decedent (who was a citizen or resident of the United States at the time of his death), to value qualified real property used for farming or in a closely held business at its current value as a farm or in the closely held business, rather than at the value of its potential "higher and best" use. The decrease in value of the qualified real property taken into account for the purpose of this election may not exceed $500,000.

To be eligible, the property must

1. Be located in the United States.
2. Be used at date of death for farming or other trade or business.
3. Comprise 50 percent of the adjusted value of the gross estate when combined with certain personal property and 25 percent of such amount in combination with the personal property.
4. Pass to a "qualified heir."
5. Have been owned and put to qualified use by the decedent or member of his family for five of the last eight years.

The election shall be made by filing (not later than the time for filing the estate tax return) a written agreement signed by each person who has an interest in the real property so valued, consenting to the valuation.

If the property is disposed of or qualified use ceases within 15 years, a recapture of the tax savings may occur.

§ 2039 Gross Estate: Qualified Plan Distribution

Sec. 2039(f)

A recipient of a lump-sum distribution from a decedent's qualified plan may irrevocably elect to have the distribution excluded from the gross estate if the recipient agrees to subject the amount received to income taxes without the

benefit of capital gain treatment or the 10-year averaging convention.

The election is to be made in the time and manner provided by the regulations.

Farm or Business Property: Alternative Provision for Joint Interests of Spouses — § 2040

Sec. 2040(c)

The Revenue Act of 1978 provides for an elective alternative to the qualified joint interest provision of the Tax Reform Act of 1976 for certain farm and closely held business property.

The election applies to estates of decedents dying after 1978. It permits the value of jointly and closely held farm and business property to be reduced to reflect an interest factor on contributions made (1) to acquire such jointly held property and (2) for materially participating in the operations of the business. To be eligible to make this election, the decedent and the decedent's spouse must have had an interest in joint tenancy or tenancy by the entirety in real or tangible personal property created by one or both of them. The property must be used as a farm or for farm purposes or for any other trade or business, and the surviving spouse must have materially participated in operating or managing the business.

The amount excluded is determined by a formula described in this section. The election must be made no later than the deadline for filing the estate tax return (plus any extensions). The manner of making the election will be determined by regulations.

Valuation of Taxable Estate: Deduction of Certain Expenses — § 2053

Sec. 2053(a)
Regs. sec. 20.2053-1(d)

A fiduciary or other person may choose to claim certain expenses (administration expenses and medical expenses)

either as deductions in computing the decedent's taxable estate or as deductions in computing the taxable income of the estate.

If the executor chooses to claim the deduction for income tax purposes, he should file a waiver of the deduction for estate tax purposes [regs. sec. 1.642(g)-1].

Once a waiver of a deduction for estate tax purposes is timely filed, it operates as a relinquishment that is irrevocable.

Claims Against the Estate: Limitation on Deductibility

Sec. 2053(c)(2)

In determining the value of the gross estate, payments of claims from estate property not subject to claims and made necessary because the claims exceed the value of the property subject to claims will be allowed only if the executor pays such excess amounts prior to the due date for filing the estate tax return. If the executor does not make payment prior to the return's due date, the deduction from the estate will be limited to the value of the property subject to claims, notwithstanding that the claims and the payments in settlement eventually exceed such value.

State Death Taxes: Deductibility

Sec. 2053(d)(1)(A)
Regs. sec. 20.2053-9

An estate may elect to deduct state death taxes imposed on a transfer by a decedent for public, charitable, or religious uses in lieu of claiming such taxes as a tax credit under sec. 2011. In order for the deduction to be allowed, certain conditions must be met [regs. sec. 20.2053-9(b)] concerning the parties to be benefitted by allowance of the election.

The executor makes the election in a written notification

to the district director. It should be filed by the executor prior to the expiration of the period of limitation on assessment (usually three years from the last day for filing the return).

The executor may revoke the election at any time prior to the expiration of the period of limitation on assessment by filing a written notification with the district director [regs. sec. 20.2053-9(c)].

Foreign Death Taxes: Deductibility

Sec. 2053(d)(1)(B)
Regs. sec. 20.2053-10

An estate may elect to deduct certain foreign death taxes imposed on a transfer by a decedent for public, charitable, or religious uses, in lieu of claiming such taxes as a tax credit under sec. 2014. In order for the deduction to be allowed, certain conditions must be met [regs. sec. 20.2053-10(b)] concerning the parties benefitted by allowance of the election.

The executor makes the election in a written notification to the district director. It should be filed by the executor prior to the expiration of the period of limitation on assessment (usually three years from the last day for filing the return).

The executor may revoke the election at any time prior to the expiration of the period of limitation on assessment by filing a written notification with the district director [regs. sec. 20.2053-10(c)].

Valuation of Taxable Estate: Deduction of Certain Losses

§ 2054

Sec. 2054
Regs. sec. 20.2054-1

A fiduciary or other person may choose to claim certain casualty and theft losses (which occur during the settlement

of the estate and which are not compensated for by insurance) either as a deduction in computing the decedent's taxable estate or as a deduction in computing the taxable income of the estate.

If the executor chooses to claim the deduction for income tax purposes, he should file a waiver of the deduction for estate tax purposes [regs. sec. 1.642(g)-1].

Once a waiver of a deduction for estate tax purposes is timely filed, it operates as a relinquishment that is irrevocable.

§ 2513 Gift Tax: Gift-Splitting by Spouses

Sec. 2513
Regs. sec. 25.2513
Form 709

Spouses may consent to have gifts made to a third party considered as made one-half by the donor and one-half by the donor's spouse.

The consent to split gifts must be given on or before the 15th day of the second month following the calendar quarter in which the gifts were made or if no returns have been filed by the date, consent may be given on the first return filed by either spouse. However, once a deficiency notice for gift taxes has been issued for a particular calendar quarter, a consent to gift-splitting for that period will be ineffective. The consent of the husband is signified on the wife's return and the consent of the wife is signified on the husband's return in the place provided on Form 709. If only one spouse is filing a gift tax return, the consent of both spouses should be signified on that return.

The consent to gift-splitting applies separately to each calendar quarter. Either spouse may revoke the consent by filing (in duplicate) with the district director a signed statement of revocation on or before the 15th day of the second month following the calendar quarter in which the gifts were made. A consent which was signified after that date cannot be revoked.

Gift Tax: Joint Ownership of Real Estate by Spouses

Sec. 2515
Regs. sec. 25.2512-2
Form 709

The creation of or addition to a joint tenancy in real property between husband and wife is not treated as a gift unless the donor spouse so elects. If the election is not made, the termination of the tenancy, other than by reason of the death of a spouse, is considered a gift to the extent the proportion of the proceeds received by either spouse is not equal to the proportion of the consideration furnished by the spouse in acquiring or improving the property. If the donor does make the election, such a termination of the tenancy is considered a gift to the extent that the proceeds received by either spouse are in excess of the spouse's proportionate interest in the property immediately prior to such termination.

The election is exercised by including the value of such gifts in the gift tax return of the donor spouse for the calendar quarter in which the tenancy was created or added to. The election is valid only if a timely return is filed (including extensions). If a taxpayer wishes to avail himself of this election, he must file a gift tax return and make the election even though the value of the gift involved does not exceed his annual gift tax exclusion.

Employment Taxes

FICA: Related Corporations—Paymaster Plan § 3121

Sec. 3121
Regs. sec. 31.3121(s)-1

Two or more related corporations concurrently employing the same individual may compensate the individual through a common paymaster, thereby having the total FICA and FUTA taxes determined as though the individual had only one employer.

The related corporations should sign and retain an agreement designating a common paymaster. The agreement should also contain a promise by each corporation to remit a pro rata share of the remuneration and allocated taxes to the paymaster.

FICA: Waiver of Exemption

Sec. 3121(k)(1)
Regs. sec. 31.3121(k)-1
Forms SS-15, SS-15a

Certain religious and charitable organizations may elect to have the Social Security Act extended to service performed by their employees.

To waive its exemption from FICA, the organization should file a certificate (Forms SS-15 and SS-15a) containing the name, address, and Social Security number of each employee who concurs in the certificate. The certificate should be filed with the appropriate Internal Revenue Service center. The effective date of the waiver should be in accordance with sec. 3121(k).

A waiver may be revoked effective at the end of a calendar quarter by giving two years' advance notice in writing, but only if at the time of receipt of such notice the certificate has been in effect for at least eight years [sec. 3121(k)(1)(D)].

§ 3121 FICA: Coverage of Foreign Subsidiary

Sec. 3121(l)(1)

A domestic corporation may elect to have the Social Security Act extended to service performed by certain employees of a foreign subsidiary by entering into an agreement with the secretary or his delegate.

The agreement will become effective with the first day of the calendar quarter in which the agreement is entered into or with the first day of the succeeding calendar quarter, as specified in the agreement [sec. 3121(l)(2)].

The agreement may be terminated by the domestic corporation effective at the end of the calendar quarter by giving two years' advance notice in writing, but only if at the time of receipt of such notice the certificate has been in effect for at least eight years [sec. 3121(l)(3)].

§ 3401 Withholding Tax: Sick Pay

Sec. 3401
Regs. sec. 31.3401(a)-1(b)(8)(ii)

An employer can elect to withhold or not to withhold income tax on the tax-exempt portion of "loss of wage" payments (sick pay).

If the employer decides not to withhold, he must keep records that *(a)* separately show the amount of each payment and how much of it is taxable and *(b)* contain data supporting the employer's right to treat the payment as tax exempt.

The election may be terminated at any time. Failure to keep records will also terminate the election.

§ 3402 Withholding Tax: Methods of Computation

Sec. 3402
Regs. sec. 31.3402(a)-1

An employer may use the percentage method, the wage bracket method, or certain other methods (outlined in regs. sec. 31.3402(h)(4)-1) in computing the income tax to be withheld from wages.

A choice of a method at the time of payroll preparation will constitute an election.

The election terminates when the method is changed.

Withholding Tax: Bonuses

Sec. 3402
Regs. sec. 31.3402(g)-1

Employers who pay supplemental wages, such as bonuses, may elect to withhold a flat 20 percent on the supplemental wage in lieu of the graduated rates.

The election is made at the time the wage payment is made and applies only to each particular payment.

Withholding Tax: Special Allowance

Sec. 3402(f)(1)(G)
Form W-4

A single person and any married person whose spouse is not also employed may be entitled to claim a "special withholding allowance." This allowance may not be claimed by either husband or wife when both are employed or by any employee who has two or more concurrent jobs.

Withholding Tax: Other Methods

Sec. 3402
Regs. sec. 31.3402(h)(4)-1

An employer may use any other method of withholding, as long as the amount is substantially the same as that achieved by applying sec. 3402(a).

Withholding Tax: Noncash Remuneration

Sec. 3402(j)
Regs. sec. 31.3402(j)-1
Form W-2

An employer may elect to withhold income tax from noncash remuneration paid to retail commission salesmen if normal remuneration is made in cash. (For a definition

of "noncash remuneration" and "retail commission salesman," see regs. sec. 31.3402(j)-1(b) and (c).)

The election to withhold is made at the time the payroll is prepared. Even though withholding is not required on noncash remuneration, it must be included on Form W-2 as wages.

Withholding Tax: Additional Allowances

Sec. 3402(m)
Regs. sec. 31.3402(m)-1
Form W-4

Employees with substantial itemized deductions may elect to claim additional withholding allowances.

To make the election, the employee should file a withholding exemption certificate with his employer claiming such extra allowances. (To determine the proper number of extra allowances, refer to Employee's Withholding Exemption Certificate [Form W-4].)

Employees should be encouraged to review their withholding allowances on an annual basis.

Withholding Tax: No Liability for Income Taxes

Sec. 3402(n)
Regs. sec. 31.3402(n)-1

An employee who had no federal income tax liability in the prior year and who expects to incur no federal income tax liability in the current year may exempt himself from withholding.

To do this, the employee should file a withholding exemption certificate with his employer certifying the foregoing facts. (See the regulations for certain restrictions on joint return filers.)

This is an annual election and terminates automatically on December 31 of each year if not withdrawn sooner by the employee's filing another withholding exemption certificate with his employer.

Withholding Tax: Pensions and Annuities

Sec. 3402(o)
Temporary regs. sec. 32.1
Form W-4P

An individual receiving pension or annuity payments may request that the payments be subject to withholding.

To make this election, the payee must inform the payor in writing on Form W-4P that he wishes to have such payments made subject to withholding. The request must be accompanied by a withholding exemption certificate. Only the taxable portion of the payments will be subject to withholding. Lump-sum payments are not covered by this section.

To revoke the election, the payee must furnish the payor with a written statement requesting termination of withholding. A request under this statement shall remain effective until terminated.

Withholding Tax: Nonwage Payments

Sec. 3402(p)
Regs. sec. 31.3402(p)-1

Where both the employee and the employer agree to withholding, remuneration for services rendered by an employee for his employer that are not included in the definition of wages can be subjected to withholding. This election may also be made for any other type of payment for which the Treasury finds withholding appropriate. The amounts withheld in these cases are the amounts specified in the regular rates and tables.

To make the election, the employer and employee must agree in the manner prescribed by regs. sec. 31.3402(p)-1(b).

The election is effective for such period as is mutually agreed upon, but either the employer or employee may terminate it sooner by furnishing a signed written notice to the other.

§ 3507 Advance Payment of Earned Income Credit

Sec. 3507(e)(1)

Beginning in 1979, an individual will be entitled to an earned income credit of 10 percent of the first $5,000 of earned income. However, if the individual's earned income or adjusted gross income exceeds $6,000, the credit will be the lower of

1. The actual credit (10 percent of the first $5,000 of earned income), or
2. $500 less 12.5 percent of the amount by which his earned income or, if higher, his adjusted gross income exceeds $6,000.

An individual eligible to receive the earned income credit may elect to receive the credit in advance by filing with his employer an earned income eligibility certificate, which certifies his eligibility for the credit, whether he has a current certificate in effect with another employer and whether his spouse has such a certificate in effect.

The employee may revoke or change his election by furnishing his employer with a revocation or a new certificate. The employee is required to revoke or change his election if he becomes ineligible for the credit or if his spouse causes a certificate to come into effect.

The advance payment provisions are effective for remuneration paid after June 30, 1978.

Advance Payment of Earned Income Credit

Sec. 3507(d)(3)
Temporary regs. sec. 38.3507-1(c)(3)

When an employee has elected to receive advance payment of the earned income credit and the advance payments made by the employer for the payroll period exceed the employer's combined liability for federal withholding taxes, withheld FICA taxes, and the employer's share of FICA taxes, the employer may elect to either reduce the advance payments to employees pro rata or to pay the excess and treat it as advance payment of taxes.

The manner of making and changing the election is prescribed in the temporary regs. sec. 38.3507-1(c)(3).

Private Foundations

Private Foundations: Additional Tax on Self-Dealing — § 4941

Sec. 4941
Regs. sec. 53.4941(e)-1(c)

Unless an act of self-dealing with a private foundation is corrected, an excise tax equal to 200 percent of the amount involved is imposed by regs. sec. 53.4941(b). This tax can be avoided by undoing the transaction that constituted the act of self-dealing to the extent possible. Correction must be made within 90 days after the date of mailing of a deficiency notice unless an extension is obtained under regs. sec. 53.4941(e)-1(d)(2).

Private Foundations: Tax on Failure to Distribute Income — § 4942

Sec. 4942(a)(2)(C)
Regs. sec. 53.4942(a)-1(a)(1),(3)

A private foundation may prevent the imposition of the initial tax on failure to distribute required amounts due to incorrect valuation of its assets.

The initial tax imposed by sec. 4942 will not apply if the foundation notifies the secretary or his delegate that qualifying distributions were subsequently timely made.

Private Foundations: Computation of Minimum Investment Return

Sec. 4942(e)(1)
Regs. sec. 53.4942(a)-2(c)(1)(i)

If an asset is not actually being used for purposes of a foundation's charitable, educational, or other similar exempt function, it may still be excluded from assets upon which a minimum investment return must be computed.

To do this, the foundation must establish to the commissioner's satisfaction that the asset's immediate use in its exempt function is not practical and that definite plans exist to commence such use within a reasonable period of time.

Private Foundations: Certain Loans as Qualifying Distributions

Sec. 4942(g)(1)
Regs. sec. 53.4942(a)-3(a)(2),(4)

For the purpose of determining qualifying distributions (to arrive at undistributed income of a private foundation subject to tax), a foundation may treat a repayment after December 31, 1969, of a loan made before January 1, 1970, as a qualifying distribution if the funds were borrowed to make expenditures for a specific charitable or similar purpose. The amount of such qualifying distribution is limited to the amount of the loan that the foundation expended for charitable or similar purposes before January 1, 1970.

Private Foundations: Treatment of Set-Asides

Sec. 4942(g)(2)
Regs. sec. 53.4942(a)-3(b)

Private foundations may treat certain amounts set aside for specific charitable projects as qualifying distributions. (This course of action makes unnecessary immediate disbursement of these funds by a private foundation.) To qualify for this treatment, the foundation must satisfy the commissioner that the amount set aside will be paid toward

the specific project within 60 months (the time may be extended) and that the project will be better accomplished by such set-aside than by immediate payment.

The commissioner's approval of a set-aside must be obtained in writing. An application for approval must be made no later than the end of the taxable year in which the amount is actually set aside. It should contain all the information called for in the regulations.

If approved, the set-aside must be evidenced by the entry of a dollar amount on the books of the private foundation as a pledge or obligation.

Private Foundations: Treatment of Certain Contributions

Sec. 4942(g)(3)
Regs. sec. 53.4942(d)-3(C)

If two requirements are met, a private foundation may treat as qualifying distributions contributions to sec. 501(c)(3) organizations that are

1. Controlled by the foundation or by disqualified persons, or
2. Private foundations which are not operating foundations.

The two requirements for this treatment are the following:

1. The donee must distribute an amount equal to such contributions as a qualifying distribution out of its corpus within one year after the year of receipt.
2. The donor must obtain sufficient evidence thereof from the donee.

Private Foundations: Order of Qualifying Distributions

Sec. 4942(h)(2)
Regs. sec. 53.4942(a)-3(d)

A foundation may elect to have a qualifying distribution that is not made out of the undistributed taxable income of the immediately preceding taxable year treated as a

 distribution out of either the undistributed taxable income of a designated prior taxable year or out of corpus.

The election is made by filing a statement with the commissioner on or before the due date for filing a return under sec. 6033 (including extensions). The statement must contain the information called for in the regulations. The election is effective as of the date the statement is filed with respect to the taxable year in which a qualifying distribution is made.

This is an annual election and is irrevocable after the time for filing the return (including extensions) has expired. Prior to that time, the election may be revoked by filing a statement of revocation in accordance with the regulations.

Private Foundations: Extension of "Correction Period" for Failure to Distribute

Sec. 4942(j)(2)
Regs. sec. 53.4942(a)-1(c)(3)

A private foundation may take action to extend the "correction period" (see sec. 4942(j)(2)) in which to mitigate taxes imposed by sec. 4942 for failure to distribute income. Generally, the correction period begins with the first day of the taxable year and ends 90 days after the mailing of a notice of deficiency for taxes imposed by sec. 4942.

The correction period will be extended if

1. The foundation in good faith actively seeks to take corrective action, but it cannot reasonably expect to complete it before the end of the correction period, and failure to distribute was an isolated occurrence not likely to recur or
2. The foundation files a claim for refund of the tax imposed under sec. 4942(a)(1) within the unextended correction period. (In this case, the commissioner will extend the correction period for as long as the claim is still pending.)

In the event the refund claim (in (2) above) is denied, the correction period will be extended for an additional 90 days to permit the foundation to file a suit or proceeding referred to in sec. 7422(b). The correction period will be further extended during the pendency of such suit.

Private Foundations: New Foundations—Special First-Year Rule

Sec. 4942(j)(3)
Regs. sec. 53.4942(b)-3(b)(1), (2)

Generally, a new foundation will be treated as an operating foundation only if it can meet the tests of sec. 4942(j)(3). If a foundation meets these tests by the end of its first taxable year, it will be treated as an operating foundation from the beginning of such taxable year. (See regs. sec. 53.4942(b)-3(b)(1).) However, the foundation may be treated as an operating foundation without having to await the close of its first year if it submits evidence prior to the end of its first taxable year that establishes to the satisfaction of the commissioner that it can reasonably be expected to meet the tests referred to in regs. sec. 53.4942(b)-3(b)(2).

Private Foundations: Disposition of Excess Business Holdings — § 4943

Sec. 4943(c)(4)(C)

A private foundation can suspend the running of the allowable periods for disposition of its excess business holdings.

To suspend the disposition period, the foundation should commence a judicial proceeding necessary to reform its governing instrument, and so forth (as in effect on May 26, 1969) to allow such disposition or to excuse compliance therewith. The disposition period is extended during pendency of the proceeding.

Private Foundations: Extension of "Correction Period" for Jeopardizing Investment — § 4944

Sec. 4944(e)(3)
Regs. sec. 53.4944-5(d)

If a private foundation makes an investment that jeopardizes its exempt purpose, it is subject to a tax imposed by

sec. 4944(a)(1). If the jeopardizing investment is not eliminated within the "correction period" (see sec. 4944(e)), the foundation is subject to an additional tax imposed by sec. 4944(b)(1). Extension of the correction period to dispose of a jeopardizing investment of a private foundation (after mailing of a deficiency notice) can be accomplished if the foundation complies with the provisions of regs. sec. 53.4944-5(d).

§ 4945 Private Foundations: Status of Certain Nonpartisan Organizations

Sec. 4945(f)
Regs. sec. 53.4945-3(b)(4)

A new foundation described in sec. 501(c)(3) that is exempt from taxation under sec. 501(a) and is carrying on nonpartisan activities may, during its first taxable year, request an advance ruling that it be considered as an organization described in sec. 4945(f). Such an advance ruling will avoid the requirement of regs. sec. 53.4945-3(b)(3)(ii) that it await the close of its first taxable year before classification as a sec. 4945(f) organization.

An organization will be given an advance ruling that it is an organization described in sec. 4945(f) if it submits evidence to the commissioner establishing that it can reasonably be expected to meet the tests described in sec. 4945(f).

Private Foundations: Classification of Grants to Individuals

Sec. 4945(g)
Regs. sec. 53.4945-1(d),(e)

A private foundation may exclude certain grants to individuals from classification as taxable expenditures.

To accomplish this, the foundation must satisfy the commissioner that the grant was awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the secretary or his delegate.

Private Foundations: Classification of Grants to Organizations

Sec. 4945(h)
Regs. sec. 53.4945-4(d)

A private foundation may exclude grants to certain organizations from classification as taxable expenditures.

To exclude grants from classification as taxable expenditures, private foundations must exert all reasonable efforts and establish adequate procedures to

1. See that the grant is spent solely for the intended purpose,
2. Obtain full and complete reports from the grantee on how the funds are spent, and
3. Make full and complete reports regarding such expenditures to the secretary or his delegate.

A request for advance approval of a foundation's grant procedures may be made under regs. sec. 53.4945-4(d).

Private Foundations: Split-Interest Trusts — § 4947

Sec. 4947(a)(2)(B)

Split-interest trusts may avoid certain "private foundation limitations" on amounts payable under terms of the trust for which no tax deductions were allowable.

Application of the private foundation taxes can be avoided if the trust segregates such nondeductible amounts from amounts that were allowed as deductions for income, estate, or gift tax purposes. Under sec. 4947(a)(3), a trust holding such segregated amounts must separately account for the various income, deduction, and other items properly attributable to each such segregated amount.

Private Foundations: Denial of Exemption to Foreign Organizations — § 4948

Sec. 4948(c)(3)(B)
Regs. sec. 53.4948-1(c)(3)(ii)
Form 1023

A foreign private foundation which is denied exemption from taxation under sec. 501(a), due to prohibited trans-

§ 4948 actions, may request reinstatement of its exempt status.

The organization should file a request for exemption on Form 1023 with a declaration that the organization will not knowingly again engage in a prohibited transaction. The request should be made with respect to the second (or any later) taxable year following the taxable year in which notice of engagement in a prohibited transaction is given by the commissioner.

Procedure and Administration

Tax Returns: Withholding for Domestic Service — § 6011

Sec. 6011(a)
Regs. sec. 31.6011(a)-1(a)(3)
Forms 942, 941

Generally, Form 942 is the form prescribed for making a return with respect to income tax withheld, pursuant to an agreement under sec. 3402(p), from wages paid for domestic service in a private home. However, an employer may elect under regs. sec. 31.6011(a)-1(a)(3) to use Form 941 as his return for FICA instead of Form 942. (See also regs. sec. 31.6011(a)-4(a)(2).)

Tax Returns: Separate vs. Joint — § 6013

Sec. 6013(a)
Regs. sec. 1.6013-1

A husband and wife can file separate or joint returns under prescribed conditions (including where one spouse has died during the year), even though one of the spouses has no gross income or deductions.

The election is made by filing a return (either separate or joint) by the due date. No special information is required. An election for one year is not binding on future years, and a new election is made for each year. In a case where the surviving spouse makes the joint return and thereafter an

executor or administrator of the decedent is appointed, the executor or administrator may disaffirm such joint return if done within one year after the last day (including extensions) for filing the return of the surviving spouse.

A change from separate to joint returns is permissible. (See the following election.) However, once a joint return has been filed, a change to separate returns for that particular year is not permissible after the time for filing the return of either spouse has passed.

Tax Returns: Change From Separate to Joint

Sec. 6013(b)
Regs. sec. 1.6013-2

If separate returns have been filed, a husband and wife can change their election and file a joint return under the conditions prescribed in regs. sec. 1.6013-2(b).

To change from separate returns to a joint return, the joint return must be filed within three years from the last day for filing the return (excluding extensions) for the taxable year of change.

Neither spouse may change any election regarding income, deductions, and credits made on their separate returns if such elections would have been irrevocable if the joint return had not been made.

§ 6014 Tax Returns: Computation of Tax by IRS

Sec. 6014(a)
Regs. sec. 1.6014-2

An individual may elect to have his tax computed by the IRS if his adjusted gross income does not exceed $40,000 if married and filing a joint return or a qualifying widow or widower. The limit is $20,000 for all others. The individual's income must consist only of wages, tips, dividends, interest, pensions, and annuities and he must choose the standard deduction.

The election is made annually by filling in the proper lines on Form 1040 and not computing the tax. (See the instructions to Form 1040 for explicit directions.) In such a case, the IRS will compute the tax and bill the taxpayer

for any tax due or issue a refund if there has been an overpayment. This election can only be made if the return is timely filed (excluding extensions).

This election may be revoked by filing an amended return within the period of limitations under sec. 6511.

Estimated Tax: Separate or Joint Declaration — § 6015

Sec. 6015(b)
Regs. sec. 1.6015(b)-1
Form 1040-ES

A husband and wife can file a separate or a joint declaration of estimated tax. (However, there are certain instances when a joint declaration may not be filed; see regs. sec. 1.6015(b)-1(a).) If separate tax returns are subsequently filed, payments made on account of the estimated tax for such year may be divided between them in any manner they wish.

The election is made by filing either a separate or joint Form 1040-ES by the due date. No special information is required.

The election to file either a separate or joint declaration is made annually.

Estimated Tax: Return as Declaration or Amendment

Sec. 6015(f)
Regs. sec. 1.6015(f)-1

Taxpayers can elect to file their tax returns by January 31 (or March 1 for certain taxpayers), and this will substitute for a declaration due, or an installment due, on January 15. (Corresponding dates are available for fiscal year taxpayers.)

The election is made by filing a return by the elective date and paying the full amount shown as due on such return. No special information is required.

The election is made annually.

§ 6032 Information Returns: Banks' Common Trust Fund

Sec. 6032
Regs. sec. 1.6032-1
Form 1065

Every bank maintaining common trust funds may use Form 1065 or some other form (not specified) for reporting the income of the common trust fund.

The election is to be made annually by designating Form 1065 as the return of the common trust fund in accordance with regs. sec. 1.6032-1. The return must be filed on or before the 15th day of the fourth month following the close of the taxable year. A separate return is required for each common trust maintained by the bank.

§ 6033 Information Returns: Group Return for Exempt Organizations

Sec. 6033
Regs. sec. 1.6033-1(d)
Form 990

A central or parent organization (other than a private foundation) exempt from taxation under sec. 501(a), in addition to filing a separate return, may file a group return on Form 990 for two or more of its local organizations. The filing of the group return is in lieu of filing a separate return by each local organization included in the group return. However, a local organization that is a private foundation may not be included in the group return.

The election is made annually by filing a group return on Form 990 with the statement required by the regulations. The return should be filed on or before the 15th day of the fifth calendar month following the close of the period for which the return is required. In addition, regs. sec. 1.6033-1(d)(2) requires the central organization to maintain on file annual authorizations and certain other information pertaining to the local organizations.

Information Returns: Officers of Foreign PHC — § 6035

Sec. 6035
Regs. sec. 1.6035-1(b)
Forms 957, 958

Two or more officers or directors of a foreign personal holding company, each of whom is required to file an information return for the same year, may file a joint information return instead.

To make the election, they should jointly file Form 957 and Form 958 with the director of international operations by the 15th day of the first month after the close of the taxable year.

The election must be made each time a return is required.

Information Returns: Controlled Foreign Corporations — § 6038

Sec. 6038
Regs. sec. 1.6038-2(k)
Form 2952

Two or more persons required to submit the information required on Form 2952 regarding the same foreign corporation for the same period may do so jointly.

To exercise this option, the parties should make a joint return and file it with the income tax return of any one of the persons making the joint return.

The election is made annually.

Information Returns: Payments Other Than Dividends — § 6042

Sec. 6042
Regs. sec. 1.6042-2(a)(4)
Forms 1087, 1099

Any person required to file Form 1099 or Form 1087 with regard to another person may elect to include on a single Form 1099 both dividends and other payments made to the same recipient.

The election is made annually by reporting other payments on the form.

Information Returns: Transmittal Forms

Sec. 6042
Regs. sec. 1.6042-2(a)(4)
Forms 1087, 1096, 1099

One Form 1096 may be used to summarize and transmit both Form 1087 and 1099 instead of using separate Forms 1096 to transmit each type of form (that is, 1087 and 1099).

The election is made annually by using only one Form 1096 to summarize and transmit such forms.

Information Returns: Magnetic Tapes

Sec. 6042
Regs. secs. 1.6042-2(e), 1.9101-1
Forms 1087, 1099, W-2

Information to be transmitted on a Form 1087, 1099, or W-2 may instead be transmitted on magnetic tape or other media.

Approval of the commissioner must be granted prior to the use of magnetic tape for this purpose. (See Rev. Proc. 75-20.)

Information Returns: Time to Furnish for Dividends

Sec. 6042
Regs. sec. 1.6042-4
Forms 1087, 1099

Statements of recipients of dividend payments (Forms 1099 and 1087) must be furnished after November 30 of the year in which dividends are paid and before January 31 of the following year. However, the statement may be furnished after September 30 if sent with the final dividend payment of the year. In any case, no statement may be furnished before the final dividend of the calendar year has been paid.

Information Returns: Transactions Involving Foreign Corporations — § 6046

Sec. 6046
Regs. sec. 1.6046-1(e)(1)
Form 959

Two or more persons required to file returns regarding the organization or reorganization of a foreign corporation or an acquisition of stock of a foreign corporation may elect to file such returns jointly. However, separate returns are required with respect to each corporation involved.

The election is made annually by filing jointly on Form 959.

Information Returns: Retirement Payments, Etc. — § 6047

Sec. 6047
Regs. sec. 1.6047-1(a)(5)
Form 1099

A Form 1099 on which retirement payments to an owner-employee are being reported may include other payments to the same recipient on the same form.

The election is made annually by including other payments on a single Form 1099.

Information Returns: Interest Payments, Etc. — § 6049

Sec. 6049
Regs. sec. 1.6049-1(a)(4)
Forms 1087, 1099

A single Form 1087 or a single Form 1099 may be used to report both interest and other payments that are required to be reported on such forms.

The election is made annually by including on the forms, in addition to interest, amounts for other payments which have been made during the year.

§ 6049 Information Returns: Transmittal Forms

Sec. 6049
Regs. sec. 1.6049-1(a)(4)
Forms 1087, 1096, 1099

Any person required to report payments on both Forms 1087 and 1099 for a calendar year may elect to summarize and transmit those forms on a single Form 1096.

The election is made annually by using only one Form 1096 to summarize and transmit the Forms 1087 and 1099.

Information Returns: Time to Furnish for Interest

Sec. 6049
Regs. sec. 1.6049-3(c)
Forms 1087, 1099

Statements (Forms 1087, 1099) of recipients of interest payments must be furnished after November 30 of the year in which interest is paid and before January 31 of the following year. However, the statement may be furnished after September 30 if sent with the final interest payment for the year. In any case, no statement may be furnished before the final interest payment for the calendar year has been paid.

§ 6056 Information Returns: Private Foundations

Sec. 6056(c)
Form 990-AR

The annual report of a private foundation may be prepared in any legible form the foundation chooses.

To prepare the report, the foundation may use Form 990-AR or any other type of report containing the information required by sec. 6056(b).

§ 6096 Presidential Election Campaign Fund

Sec. 6096(a)
Regs. sec. 301.6096-1
Form 1040-X

For taxable years ending on or after December 31, 1972, individual taxpayers (other than nonresident aliens) may

designate that $1.00 of their income tax liability ($2.00 if both spouses so designate in a joint return) shall be paid into the Presidential Election Campaign Fund. Taxpayers may designate in favor of candidates of a specific political party. If no party is designated, the money will go into the general account for all presidential and vice-presidential candidates.

The election may be made at the time the return is filed either on the first page of the return or on the page bearing the taxpayer's signature.

If the taxpayer neglects to make the election at the time he files his return, he may make his election by filing Form 1040-X within 20 and one-half months after the due date for the original return for such taxable year.

Computations on Returns: Whole Dollar Amounts and Fractional Dollar Amounts — § 6102

Sec. 6102
Regs. sec. 301.6102-1(a), (b)

To the extent permitted by any internal revenue form or its instructions, a taxpayer may elect to use whole dollar or fractional dollar amounts.

The choice of rounding to whole dollars or fractional dollars is made by filing the return, declaration, or statement and reflecting the appropriate amounts thereon.

This election is made annually and may not be revoked after the time for filing the particular return (including extensions).

Installment Payment of Tax: Corporations — § 6152

Sec. 6152(a)(1)
Regs. sec. 1.6152-1(a)
Form 7004

A corporation may elect to pay its unpaid tax for the year in two equal installments instead of making a single payment. The installments will fall due as follows:

- 50 percent of the tax on or before the date prescribed for payment of the tax as a single payment and

- The remaining 50 percent on or before three months after the due date of the first installment.

The corporation can make the election by paying 50 percent of the tax due with its timely filed income tax return, or it can file Form 7004 (Application for Automatic Extension of Time to File Corporate Income Tax Return) as provided in regs. sec. 1.6081-3 and pay 50 percent of the tax at such time.

Installment Payment of Tax: Estates

Sec. 6152(a)(2)
Regs. sec. 1.6152-1(b)

Fiduciaries of estates of decedents may elect to pay the income tax in four equal installments instead of in a single payment.

The election is made by paying 25 percent of the total amount due with a timely filed return and the balance in installments as prescribed in the regulations.

§ 6156 Installment Payment of Tax: Highway Vehicles and Civil Aircraft

Sec. 6156

A taxpayer may elect to pay tax on the use of highway motor vehicles or civil aircraft in equal installments as specified in sec. 6156(a).

The election is made by filing a timely return and making the installment payments on the dates specified in sec. 6156(b).

§ 6163 Extensions: Estate Tax on Remainder Interest

Sec. 6163
Regs. sec. 20.6163-1

Where a remainder or reversionary interest is included in the gross estate, an executor may elect to postpone the payment of estate tax attributable to that interest until six

months after the termination of the precedent interests in the property. If the district director finds undue hardship, he may grant further extensions of up to three years.

The executor makes the election by filing, in the form of a letter, a notice of intention to postpone payment. The letter should be filed with the district director before the date prescribed for payment of the tax.

Extensions: Corporations Expecting Carryback — § 6164

Sec. 6164
Regs. sec. 1.6164-2
Form 1138

Corporations expecting a net operating loss carryback may apply for an extension of time for payment of taxes. The taxes to which the extension is to apply need not be those taxes that are affected by the carryback.

To apply, a statement should be filed on Form 1138 prior to the due date of the tax. The statement should set forth

1. That the corporation expects to have a loss carryback.
2. The estimated amount of the net operating loss.
3. The reasons which cause the corporation to expect such net operating loss.
4. The amount of expected tax reduction.
5. The kind of tax and the amount of time that the payment is to be extended.

The approval of an extension is subject to examination by the district director.

Extensions: Payment of Tax on Estate Consisting of a Closely Held Business — § 6166

Sec. 6166
Regs. sec. 20.6166-1

If the value of an interest in a closely held business included in determining the gross estate of a decedent (who was a U.S. citizen or resident at the time of his death) exceeds 65 percent of the adjusted gross estate, the executor

§ 6166 may elect to pay part or all of the estate tax in two or more (but not exceeding ten) equal installments. The first installment may be deferred for up to five years.

The election must be made not later than the time prescribed for filing the return (including extensions).

Extensions: Alternative Method of Payment of Tax on Estate Consisting of a Closely Held Business

Sec. 6166A

If the value of an interest in a closely held business which is included in determining the gross estate of a decedent (who was a citizen or resident of the United States) exceeds either 35 percent of the value of the gross estate or 50 percent of the taxable estate, the executor may elect to pay the estate tax in two or more (but not exceeding ten) equal annual installments.

A notice of election to pay the estate tax in installments should be filed with the district director on or before the due date of the return. If the election is made, the first installment must be paid on or before the date prescribed by sec. 6151 and each succeeding installment must be paid on or before the date which is one year after the date prescribed by sec. 6151.

§ 6167 Extensions: Expropriation Loss Recovery

Sec. 6167

A corporation may elect to extend the time for payment of tax attributable to a recovery of foreign expropriation losses if the portion of the recovery received in money is less than 25 percent of the total amount of the recovery and is not greater than the tax attributable to such recovery.

If the election is made, the tax can be paid in ten equal installments on the 15th day of the third month in each of the taxable years following the taxable year of recovery. No regulations have been issued to date regarding this election.

Deficiency Procedures: Choice of Court § 6213

Sec. 6213
Regs. sec. 301.6213-1
Form 870

A taxpayer may obtain a judicial determination of his case in either the Tax Court, a district court, or the Court of Claims.

By filing a petition with the Tax Court, a taxpayer may obtain a judicial determination of his case before paying the tax. The filing of a petition precludes the commissioner from further assessments for the taxable year in question [sec. 6212(c)]. If the taxpayer allows the 90-day statutory period following a notice of deficiency to run, or signs a Form 870 waiving the statutory period, the commissioner will then assess the tax, and payment will be required. A claim for refund can then be filed, leading to suit in either the district court or the Court of Claims. *Note:* Under sec. 6213(b)(3), after a statutory notice of deficiency has been mailed, the taxpayer may pay the tax to stop the running of interest without depriving the Tax Court of jurisdiction.

To elect to be heard in the Tax Court, the taxpayer must file a petition within 90 days (150 if addressed to persons outside the states and the District of Columbia) after the mailing of a statutory notice of deficiency [sec. 6212]. The petition must contain all relevant facts and state the taxpayer's contention of error. In addition, it must be shown that the Tax Court has jurisdiction.

The petition is generally easily withdrawn before the hearing begins, especially if an agreement has been reached between the taxpayer and the government. Once the hearing has begun, a motion may be made to withdraw, but it is subject to the discretion of the court.

Credits and Refunds: Claim for Refund § 6402

Sec. 6402(b)
Regs. sec. 301.6402-3

A taxpayer may elect to treat a return or an amended return as a claim for refund or credit instead of making a claim on Form 843.

The election to treat a return as a claim for refund is

 evidenced by a statement on the return setting forth the amount of overpayment and advising whether such amount should be refunded to the taxpayer or applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the year of the return.

Once an election is made to have an overpayment refunded it may not thereafter be changed to have the overpayment applied on account of estimated taxes.

§ 6411 Credits and Refunds: Quick-Refund Procedure

Sec. 6411(a)
Regs. sec. 1.6411-1
Forms 1139, 1045, 4466

A taxpayer may file an application for a tentative carryback adjustment ("quick refund") of taxes for a taxable year affected by a net operating loss carryback, an investment credit carryback, or a capital loss carryback.

To elect this quick-refund procedure, an application for adjustment must be filed on or after the date of the filing of the return for the taxable year of the net operating loss, etc. The application must be filed with the internal revenue office with which the return was filed within a period of 12 months from the end of such taxable year. In applying for a "quick refund," corporations should use Form 1139 or 4466. Individuals and fiduciaries should use Form 1045.

§ 6905 Discharge of Executor From Personal Liability for Decedent's Income and Gift Taxes

Sec. 6905
Regs. sec. 301.6905-1

To facilitate closing of an estate, an executor may apply for a determination of income and gift taxes imposed upon a decedent and for a discharge of personal liability therefrom. Within nine months of making application, the executor will be notified of the amount of these taxes, and, upon their payment, he will be discharged from personal

liability for any deficiency found to be due. If no notification is received, the executor is discharged at the end of the nine-month period from personal liability for any deficiency thereafter found due.

A written application must be filed by the executor after the applicable income and gift tax returns are filed. The application must request a prompt determination of the decedent's income and/or gift taxes and a discharge of the executor's personal liability for these taxes. Application is made to the district director with whom the estate tax return is required to be filed, then to the Internal Revenue Service center where the decedent's final income tax return is required to be filed. A similar rule in sec. 2204 applies for estate taxes.

Closing Agreement

Sec. 7121
Regs. sec. 301.7121-1
Proc. rules sec. 601.202
Forms 866, 906

A taxpayer may request a closing agreement regarding his liability for any internal revenue tax

- For a specific taxable period that has ended, or
- For the treatment of a specific item, whether or not the year involved is past.

To enter into a closing agreement with regard to a full year that has ended, the taxpayer should file Form 866 (in accordance with proc. rules sec. 601.202 and mim. 6383, 1949-2 CB 100) with the district director at any time prior to the docketing of the case before a court.

If the closing agreement ("ruling") is requested with respect to a particular item, the taxpayer should file Form 906. If the item relates to a current or future year, the form should be submitted to the rulings division of the IRS. If the item relates to a past year, the form should be submitted to the district director.

In general, a taxpayer's offer to enter into a closing agreement may be withdrawn prior to acceptance by the IRS.

§ 7122 Offers in Compromise

Sec. 7122
Regs. sec. 301.7122-1
Proc. rules sec. 601.203
Forms 656, 433

A taxpayer may submit an offer in compromise regarding any civil or criminal liability arising under the Internal Revenue Code.

An offer in compromise should be submitted on Form 656, accompanied by a financial statement on Form 433. It may be submitted to the secretary or his delegate at any time before the case is transferred to the Justice Department for prosecution or defense. Thereafter, the offer must be submitted to the attorney general or his delegate. In general, the offer should be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments.

An offer may be withdrawn by the proponent at any time prior to its acceptance, in which case any monies tendered with the offer generally will be refunded. Also, falsification or concealment of assets by the taxpayer, or mutual mistake of a material fact, are grounds for reopening the case after a compromise agreement has been reached.

§ 7463 Tax Court: Disputes Under $5,000

Sec. 7463(a)
Tax Court Form a-S

A taxpayer may elect, with the concurrence of the Tax Court, to have small claims procedures apply if the amount in dispute for any one year does not exceed $5,000. (See sec. 7463(e).)

The election is made by filing Form a-S, which can be obtained from the Tax Court. An original and two copies of all papers must be filed in "small tax cases."

At any time before a decision becomes final, either the taxpayer or the Treasury can request that the case be heard under normal procedures. *Note:* Once a Tax Court decision is rendered under the small claims procedure, it may not be reviewed by any other court [sec. 7463(b)].

Tax Court: Appeal of Decision § 7483

Sec. 7483
Regs. sec. 301.7483-1

A taxpayer may decide to appeal a Tax Court decision to a court of appeals.

The appeal procedure is initiated by filing a petition for review with the clerk of the Tax Court within 90 days after a Tax Court decision is entered. If the government files a timely appeal, the taxpayer will have 120 days from the time the decision was entered within which to file his appeal.

Tax Court: Bond to Stay Assessment § 7485

Sec. 7485(a)

A taxpayer may file a bond with the Tax Court rather than pay the contested portion of a deficiency determined by the Tax Court. The amount of the bond will be fixed by the Tax Court but may not exceed twice the amount of the contested deficiency. The filing of a jeopardy bond prior to or at the time a petition for review of a Tax Court decision is filed will also stay the assessment and collection of a deficiency determined by the Tax Court.

The bond may be proportionately reduced at the taxpayer's request by payment of any part of the deficiency as finally determined.

Building and Loan Associations: Character of Loans § 7701

Sec. 7701(a)(19)
Regs. sec. 301.7701-13(k)(1)(ii)

In certain instances, domestic building and loan associations have an option to determine the category of property being used to secure a loan where the loan is being secured by two or more categories of property.

A statement showing the time of determination should be filed with the return for the taxable year involved.

The election is made annually.

§ 7701 Building and Loan Associations: Requirements for Qualification

Sec. 7701(a)(19)
Regs. sec. 301.7701-13(l)(3)

The taxpayer may elect the alternative method of computing the percentage of assets needed to be considered a "domestic building and loan association." Under this method, "percentage of assets tests" may be computed on the basis of average assets outstanding during the taxable year rather than as of the close of the taxable year.

A statement must be filed with the return showing the amount of assets in each defined category and giving a brief description and the amounts of all other assets. If averages are calculated instead of using end-of-year figures, appropriate information should be included and the calculation explained. (See regs. sec. 301.7701-13(l)(5).) The method selected must be applied uniformly for the taxable year to all categories of assets.

This is an annual election and may be changed from year to year.

1.9100 Extension of Time for Making Elections

Regs. sec. 1.9100-1

The regulations provide that, at the Treasury's discretion, extensions of time may be granted for making certain elections—provided the time for making the election or application is fixed by the regulations and not by law.